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Quadra v. Superior Court of the City and County of San Francisco: A Challenge to The Composition of the San Francisco Grand Jury

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Editorial Note

The documents reprinted below represent the most recent plaintiffs' memoranda and supporting data in the trial of *Quadra v. Superior Court*. Although the *Hastings Law Journal* customarily includes only previously unpublished manuscripts, it is felt that an exception is appropriate in this case, owing to the timeliness of this challenge to the method of grand jury selection as well as the extensive treatment of both historical background and constitutional issues which it presents.

In reprinting only the plaintiffs' memoranda, the Journal envisions no substantial prejudice to the defendants. The materials published here provide a clear statement of the issues and do indicate the defendants' positions. Moreover, manuscripts considered for publication almost invariably urge particular points of view. While it is hardly common practice to solicit materials offering contrary arguments, the Journal naturally welcomes articles representing all perspectives.

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The text of plaintiffs' memoranda and portions of law students' and attorneys' affidavits are reproduced without alteration, except for minor technical and stylistic corrections and the conforming of citations to the Uniform System of Citation. Editorial comments and summaries of affidavits are placed within brackets.

Introduction

The memoranda that follow are the arguments submitted by various San Francisco neighborhood groups on the legal question whether a grand jury which lacks the power to indict and performs functions limited to investigating public bodies, obtaining information, issuing reports, and initiating impeachment procedures should be governed by the same constitutional standards that govern a grand jury with the power to return criminal indictments.

This litigation began in 1972 when the San Francisco Grand Jury had the power both to investigate and to issue indictments. After Federal District Judge Charles B. Renfrew issued an opinion stating that a *prima facie* case of discrimination in grand jury selection had been properly alleged,¹ the superior court judges in San Francisco created a second grand jury, the function of which was to be limited to investigations. Their hope was that this grand jury could be selected by "blue ribbon" standards. As the memoranda explain, during the summer of 1975 the presiding judge carefully picked a grand jury consisting of a number of lawyers, accountants, and other professionals (many of whom were personal friends or politicians presently out of office), which he believed would be best able to investigate the agencies in city and county government. Plaintiffs, representing various neighborhood groups of poor people, non-Whites, and women, persisted in this litigation because the groups felt that being excluded from the investigative grand jury was as improper as being excluded from the indicting grand jury.

On October 28, 1975, the district court granted plaintiffs' motion for partial summary judgment with respect to the classes of women and non-White ethnic minorities. Judge Renfrew stated that "the same standards for establishing a *prima facie* case of discrimination should be applied to the civil investigative grand jury as applied to the former unitary grand jury."² With reference to the requirement that groups

1. *Quadra v. Superior Ct.*, 378 F. Supp. 605 (N.D. Cal. 1974).

2. *Quadra v. Superior Ct.*, Civil No. C-72-1689, at 10 (N.D. Cal., Oct. 28, 1975).

against whom discrimination is claimed be "identifiable," the court determined that non-White ethnic minorities and women constituted such classes and that "their substantial underrepresentation on the grand jury [could] be the basis for a *prima facie* case of unconstitutional discrimination in selection."³

Relying on plaintiffs' statistical information and on the "rates of error" (explained below) which the statistics revealed, the court held that "the persistent underrepresentation of each of the two groups both as nominees and as grand jurors . . . is sufficiently substantial to establish a *prima facie* case of unconstitutional exclusion."⁴ The court then rejected as insufficient to rebut plaintiffs' *prima facie* showing the two explanations offered by defendants for the composition of the grand jury they had selected—that they had lacked the intent to discriminate and that higher qualifications are necessary for the investigative grand jury than are required for the criminal grand jury.⁵ The court admitted that some standards could be established for selection, *if* such standards were clearly articulated and related to the task of the investigative grand jury.⁶

3. *Id.*

4. *Id.* at 14.

5. *Id.*

6. *Id.* at 16-17.

Editorial Note: On January 26, 1976, San Francisco's superior court judges voted to select the next civil grand jury at random from the voters' registration list. S.F. Examiner, Jan. 27, 1976, at 5, col. 1.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

INDIANA QUADRA, et al.,
Plaintiffs

No. C-72-1689 CBR

vs.

SUPERIOR COURT OF THE
CITY AND COUNTY OF SAN
FRANCISCO et al.,
Defendants

MEMORANDUM OF POINTS
AND AUTHORITIES IN SUP-
PORT OF PLAINTIFFS' MO-
TION FOR PARTIAL SUM-
MARY JUDGMENT

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STATEMENT OF FACTS

The issue that remains to be decided in this case is whether the grand jury, potentially one of the most powerful institutions in our system of government, and one of the most ancient, is required to be representative if it has all the power and responsibility normally given to a grand jury, except that of issuing indictments.⁷ The recent decision of the defendants to create two separate grand juries, one with the power to indict and the other with all the remaining civil and investigating power, has narrowed the issue to the legal effect of such a separation of functions. A history of this case and a discussion of how the grand jury has been selected in San Francisco will help put in focus the issue that remains.

Plaintiffs began this action in 1972 to challenge the San Francisco Superior Court judges' practice of hand-picking grand jurors (often from among their personal friends and acquaintances), a practice that has year after year produced grand juries that bear almost no relationship to the population of San Francisco in terms of (a) its rich ethnic diversity, (b) the varied economic groups that reside in the city, (c) the age mix of the city, and (d) the two sexes that live here. Plaintiffs' original complaint referred to the demographic make-up of San Francisco's grand juries between the years 1960 and 1972 and alleged that non-White ethnic minorities were underrepresented by about three-fourths (*i.e.*, they composed only about one-fourth as many seats on

7. This question was mentioned but explicitly left unresolved in the court's earlier opinion in this case. *See Quadra v. Superior Ct.*, 378 F. Supp. 605, 626 (N.D. Cal. 1974).

the grand jury as their population warranted), that women were also underrepresented by about three-fourths, that persons living in the poorer sections of the city were underrepresented by from 60 to 80 percent and that both blue-collar workers and persons under forty were almost totally excluded from the grand juries.⁸ The Honorable Charles B. Renfrew reviewed this complaint in an opinion filed May 16, 1974, and concluded that (1) "the selection system in San Francisco as described by defendants does contain opportunities to discriminate"⁹ and (2) the plaintiffs had presented a *prima facie* case of discrimination as to non-Whites and women if plaintiffs' statistical allegations were true. A technical defect in the complaint concerning the allegations about the poor and the young was corrected in an amended complaint filed July 15, 1974, and defendants' subsequent motion to dismiss the complaint was rejected on March 7, 1975.

The grand juries that have been selected since the initial filing of this complaint continue to be grossly unrepresentative of the groups represented by plaintiffs in this action. The 1973 grand jury contained only five non-Whites (out of nineteen), only five women, only three persons under 40, only two persons who live in the poor areas of the city, and not one blue-collar worker.¹⁰ The 1974-75 grand jury, composed partly of volunteers (through a system that will be explained below), contained only three non-Whites (one of whom was subsequently asked to resign), again only five women, again only three persons under 40, four persons who live in the poverty areas of the town, and only one blue-collar worker. The 1975-76 grand jury, which is now "limited" to the "civil" or "investigative" functions of the grand jury through a system of "bifurcation" that will be discussed below, has not been finally impaneled at the filing of this motion, but it is being picked with extraordinary care to ensure that it will be once again a blue-ribbon panel.

The allegations that were raised by plaintiffs' initial brief thus remain essentially unchanged from the time of initial filing and clearly state a *prima facie* case of discrimination that shifts the burden of explanation to the defendants. Defendants have not once, however, offered any explanation that would adequately explain why these significant population groups are so dramatically underrepresented. The remainder of this memorandum will summarize the legal principles that govern this situation and will argue that defendants cannot constitution-

8. See *id.* at 617-19.

9. *Id.* at 617.

10. For detailed statistics, see Appendix A.

ally be permitted to continue selecting grand jurors by the present method. Before proceeding to the argument, however, plaintiffs will outline the present selection method in more detail.

The Current Method of Selecting Grand Jurors in San Francisco

Each of the 26 superior court judges in San Francisco nominates five persons each year to be placed in the pool of potential grand jurors. Each judge has his own method of selecting nominees, but it appears that many of the judges nominate persons they know (1) as friends, (2) as business associates, or (3) because of some previous or current political contact.¹¹ The Honorable Byron Arnold, the presiding judge

11. Affidavits submitted by defendants on November 14, 1972, outline the different selection procedures of the judges and illustrate the personal nature of the nominating procedure. Some typical comments from these affidavits are the following:

The Honorable Carl H. Allen: "Besides nominating those whom I knew on a personal basis, I have accepted the good judgment of others and have then screened these candidates in accordance with the same standards outlined above."

The Honorable Raymond J. Arata: "I have made my nominations from friends and acquaintances, persons recommended by friends, acquaintances, or by anyone, provided that I was convinced, after making my own investigation (including personal interviews where deemed necessary), that such person or persons were indeed competent, educated, experienced and possessed of sufficient community interest to warrant my selection of their names for nomination."

The Honorable John A. Ertola: "Based on many years of personal community social service and six years as a county-wide elected local legislator; plus two years as presiding officer of the local legislative body of this City and County, I review the names of persons who have demonstrated an interest in the community at large, expressed thoughts that in my experience and judgment indicate a fairness and objectivity of approach, and either personally represent the various segments of our society or by experience possess an understanding of our community and desire to serve it."

The Honorable Joseph Karesh: "I name as prospective Grand Jurors persons whom I know, whether they ask or do not ask to be selected. I also ask people to serve who are recommended to me by others whom I know."

The Honorable Francis McCarty: "During the time I have served on the Superior Court, I have nominated persons whom I have known, and persons whose names have been recommended to me by people whose judgment I know and respect."

The Honorable Charles S. Peery: "The persons nominated by me have been selected from the following: personal acquaintances, recommendations of personal friends, recommendations of my colleagues on the Superior Court, recommendations by public officials, by former grand jurors and by other persons not personally known to me who, in one way or another, have indicated that the prospective nominee possessed a desire to serve as a grand juror."

The Honorable S. Lee Vavuris: "The five persons whom I nominated for the 1972 Grand Jury were individuals who contacted me, indicating a desire to serve on the Grand Jury. Two of these were individuals who had been interviewed by Judge Byron Arnold, who indicated to me that he felt them qualified."

The Honorable Ira A. Brown, Jr., has nominated at least three of the wives of his

in 1972, emphasized in his deposition that he obtained names through personal and business acquaintances.¹² The Honorable Robert J. Drewes, presiding judge in 1975, stated in his deposition that he also chooses close personal and business friends¹³ but added that he sometimes specifically asks Terry Francois and Robert Gonzales, both current members of the board of supervisors, for suggestions.¹⁴ Finally, one of Judge Drewes's recent nominees, Alvin F. Derre, was a former political associate of his.¹⁵ Such political affiliations are particularly threatening to the independence of the grand jury, an essential ingredient to its power that will be discussed in more detail below. Appendix B indicates the previous offices held by the current superior court judges, all of which present potential conflict of interests problems.¹⁶

former law partners at Thelen, Marrin, Johnson, and Bridges, Gail W. Lane (in 1972 and 1973), Jean Sullivan (in 1973), and Elizabeth McPike (in 1974 and 1975).

One family has had its members nominated an unusual number of times. Mr. William J. Welsh was nominated by Judge Robert W. Merrill in 1970 and served as a grand juror that year. The next year his wife, Nita, was nominated by Judge Lawrence S. Mana, and he put her name forward also in 1972, 1973, and 1974. Their daughter, Victoria, was nominated by Judge Francis McCarty in 1973, and she has been nominated also in 1974 and 1975. See Affidavits of Nov. 14, 1972, of The Honorable Carl H. Allen, The Honorable Raymond J. Arata, The Honorable John A. Ertola, The Honorable Joseph Karesh, The Honorable Francis McCarty, The Honorable Charles S. Peery, The Honorable S. Lee Vavuris, The Honorable Ira A. Brown, Jr., *Quadra v. Superior Ct.*, Civil No. C-72-1689 (N.D. Cal., filed Sept. 20, 1972).

12. Judge Arnold explained his recent nominees as follows: Stewart Adams was a person who ran a restaurant that Judge Arnold dined at frequently. Joseph Arellano was the husband of the real estate agent through whom Judge Arnold bought his house. Charlton Buckley was the son of a longtime friend. George Sanderson had been recommended by "union labor friends of mine." John McGinty was a personal friend who had worked with Judge Arnold's wife on charitable affairs. Maurice Delman had been a personal friend for 30 years. Harry Horn was the father-in-law of a friend. Clarence Krieger is the son of a man Judge Arnold knew. James T. Rodman is Judge Arnold's son-in-law. Miriam Sweet was a close personal friend of Judge Arnold's wife and Byron Samuel was recommended by a friend. Deposition of The Honorable Byron Arnold, Nov. 28, 1972, at 11-17, *Quadra v. Superior Ct.*, Civil No. C-72-1689 (N.D. Cal., filed Sept. 20, 1972) [hereinafter cited as Judge Arnold's deposition].

13. Richard O. Herman married a friend of Judge Drewes 25 years ago. James A. Horsberg was a classmate of Judge Drewes at the Harvard Boys School. Susan Metcalf and Diane Nielson are persons that Judge Drewes knows socially. Deposition of The Honorable Robert Drewes, May 8, 1975, at 25-30, *Quadra v. Superior Ct.*, Civil No. C-72-1689 (N.D. Cal., filed Sept. 20, 1972) [hereinafter cited as Judge Drewes's deposition].

14. *Id.* at 6. Note that Judge Charles S. Peery also stated that he received recommendations from public officials. See note 11 *supra*.

15. "We were interested in a political group that was very active many years ago in finding and supporting suitable or competent candidates for the Board of Supervisors." Judge Drewes's deposition, *supra* note 13, at 27.

16. Justice Leonard M. Friedman of the California Court of Appeal has recently summarized the problem in the following language: "The California Penal Code's flac-

Each judge thus brings his own personal preferences into the selection process, and it is logical and natural that the grand juries should roughly resemble the demographic characteristics of the judges themselves. Of the present 26 judges, none are women;¹⁷ only two are non-White;¹⁸ none are under 40;¹⁹ none live in the poor areas of the city as defined for the purpose of this litigation;²⁰ and of course none make less than \$11,000,²¹ nor is any a blue-collar worker. All the judges have achieved their present positions by working hard within the present political structure and either by making the acquaintance of political leaders who would nominate them or by seeking election within the city. They thus generally have links with those currently in power, frequently including the city officials whom the grand jury is supposed to investigate. A question inevitably arises whether a grand jury hand-selected by persons with close ties to city government will have sufficient independence to scrutinize carefully the activities of that city government.

The judges also have perspectives that grow out of their personal experiences and the experiences of their generation, perspectives that may come in conflict with the current standards governing jury selection. Judge Byron Arnold, for instance, stated explicitly in his deposition that he thought that men should be preferred over women for

cid directions for grand jury selection contain no effective assurance of broad socio-economic representation. The continued absence of meaningful statutory controls only burdens the courts with repeated attacks on grand jury selection methods. Although an unrepresentative grand jury may not prejudice the individual defendant, it is detrimental to community aspirations and incompatible with the egalitarian aims of the Fourteenth Amendment. When discriminatory methods damage the community and not the accused, a representative lawsuit is available to redress the community's wrong." *People v. Superior Ct. (Dean)*, 38 Cal. App. 3d 966, 975-76, 113 Cal. Rptr. 732, 739 (1974) (citation omitted) (footnote omitted).

17. Answers to Interrogatories, June 23, 1975, at 2, *Quadra v. Superior Ct.*, Civil No. C-72-1689 (N.D. Cal., filed Sept. 20, 1972) (Judge Robert J. Drewes) [hereinafter cited as Judge Drewes's Answers to Interrogatories].

18. *Id.* One of these two judges, The Honorable Joseph G. Kennedy, apparently did not submit any nominations for the 1975-76 grand jury. This phenomenon has not been explained.

19. *Id.* at 6.

20. Defendants stated that The Honorable Jay Pfothenhauer lives in the Mission. *See id.* at 2. Nonetheless, his address, 349 Cumberland, is not within the Mission district as defined for purposes of this litigation. In Appendix A, plaintiffs indicate that the geographical boundaries have been picked by reference to the property values and median incomes of the various census tracts in the city, and that area west of Dolores Street where Judge Pfothenhauer lives is substantially more affluent than the poor areas as defined for this litigation.

21. *Id.* at 3.

grand jury duty.²² Plaintiffs point out that these improper perspectives may exist, not for the purpose of maligning the defendants, who have served San Francisco ably and well in most respects, but to suggest that any group of individuals will bring to any selection task its own personal perspective. If, then, our goal is to avoid discrimination and to impanel a grand jury that is "a body truly representative of the community,"²³ it seems necessary to insist that some more neutral selection procedure be employed.²⁴

After each judge submits his nominations for the forthcoming grand jury, 30 names are traditionally selected at random from among the 120 or 130 nominees. These 30 persons are then instructed to come to the presiding judge's courtroom where they are interrogated by the presiding judge or by the jury clerk. Traditionally, the presiding judge then selects from among the 30, without giving any indication of what standards have been used to eliminate the 11 who are excused. This process thus introduces a second layer of possible bias. Not only is the original pool hand-selected by the panel of judges who pick and choose from among their friends and acquaintances, but in addition the

22. The dialogue on this question was as follows:

Question: In selecting a grand jury, do you believe that women are as competent to serve as grand jurors as men?

Judge Arnold: Women are competent to serve as grand jurors. *My preference would be that it should be comprised principally of men, however.*

Q: Why is that?

A: Well, because in a body such as a Grand Jury, I think that the Committee chairmen and the personal members of these committees, would be better served by men as a whole than by women, and we have several ladies on our Grand Jury now, who function along with the men very, very well, but I think that *the men make better chairmen, and members of the committees than do the women.*

Q: Is there any particular reason for that?

A: No. No particular reason. *Men are just better suited for the work than women.* Judge Arnold's deposition, *supra* note 12, at 24-25 (emphasis added). Judge Drewes may perhaps exhibit the same general perspective, though in a more subtle manner, through his membership in the all-male Bohemian Club. See Judge Drewes's deposition, *supra* note 13, at 39. Many of the other judges belong to exclusive clubs of one sort or another. See Appendix B *infra*.

23. *Carter v. Jury Comm'n*, 396 U.S. 320, 330 (1970), quoting *Smith v. Texas*, 311 U.S. 128, 130 (1940).

24. Defendants have stated explicitly in their depositions and answers to interrogatories that the population groups that have been so dramatically underrepresented on San Francisco's grand juries—the non-White, women, the young, and the poor—are just as competent and qualified to serve as grand jurors as anyone else. See Judge Drewes's Answers to Interrogatories, *supra* note 17, at 4; Judge Arnold's deposition, *supra* note 12, at 26, 28; Judge Drewes's deposition, *supra* note 13, at 32, 37. Nonetheless, defendants have consistently and repeatedly selected grand juries that underrepresent these groups. This must mean that the present selection method inevitably produces unrepresentative grand juries.

presiding judge makes the ultimate selections without review or reasons given. Many judges exercise this discretion wisely, but the possibility clearly exists of structuring the grand jury according to the individual prejudices of the presiding judge.

During the past two years, perhaps in response to the criticism that they have received concerning their selection methods, the San Francisco Superior Court judges have experimented with variations on this traditional theme. Prior to the selection of the 1974-75 grand jury, residents of San Francisco were told through the press that they could volunteer for grand jury duty and several hundred did so. The court clerks then randomly selected from this group of volunteers 101 names, a number equal to the number of persons nominated by the 26 judges. From the combined groups of 202 persons, the clerks then selected 40 persons who were summoned to the presiding judge's courtroom for rigorous questioning.²⁵ By the luck of the draw 26 of the 40 summoned persons were volunteers, but after the presiding judge's careful questioning he selected ten persons from among the 14 nominees and only nine persons from the 26 volunteers to constitute the grand jury.

Despite this seeming manipulation, however, the 1974-75 grand jury has proved to be unique among San Francisco's recent grand juries in terms of the intensity of its attacks on the city's highest public officials. The grand jury's important Committee No. 1, which investigates the offices of the mayor and the controller, issued a stinging report on July 28, 1975, accusing Mayor Joseph L. Alioto of apparent conflicts of interest regarding the finances of the city's port and criticizing his lack of response in trying to resolve the Sunol Golf Course lease scandal.²⁶ Mayor Alioto has been a controversial figure for much of his term in office, but this is the first time any grand jury report has been critical toward him,²⁷ and it may be significant that this Committee No.

25. As plaintiffs have argued from the outset of this case, this close judicial questioning violates California Penal Code section 908, which prescribes selection by lot of the 19 grand jurors if more than 19 names appear in the final pool. See 378 F. Supp. at 617 n.16. Although defendants' 1974 "Proposed Rule" may have been designed to alter this procedure, the questioning has persisted. See 378 F. Supp. 630-31 (Appendix C).

26. See S.F. Examiner, July 28, 1975, at 1, col. 6.

27. More typical comments are those contained in the 1971 grand jury report: "This committee of the Grand Jury wishes to commend the Mayor, the Honorable Joseph L. Alioto, for the interest, leadership and positive spirit and attitude that he has demonstrated to the people of San Francisco on so many occasions and in so many ways to make San Francisco again the city that knows how." 1971 GRAND JURY REPORTS: CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA 86.

Judge Robert J. Drewes has stated that in the past the grand jury reports have some-

1 contains *three volunteers* and *only one* person nominated by a superior court judge.²⁸

Presiding Judge Robert J. Drewes, who has the responsibility of guiding the grand jury through any legal or other difficulties it might encounter, stated in his deposition that the 1974-75 grand jury has been "a divided grand jury" with substantial "internal squabbling and disagreement" which has "taken up immeasurable time on my part: Conferences, reconciliations, attempts to work out the difficulties and so forth."²⁹ Judge Drewes stated that he was not aware of all the issues involved, but he nonetheless attributed the difficulty to the presence of volunteers on the grand jury.³⁰ Another interpretation could be that a healthy divergence of opinions existed.

Mayor Alioto's response to the criticism he received from Grand Jury Committee No. 1 is important and instructive to this litigation. He stated: "I urge our judges to exercise greater care in determining the quality, experience, and general intelligence of grand jurors they appoint."³¹ The Mayor's intrusion into the grand jury selection process is of course wholly improper, because (as is discussed below) this body is designed to be an independent watchdog on the mayor (and all city government departments) and should be selected by a process that insulates it from all political pressures.³²

In any event, the superior court judges had by the end of January 1975 decided that the "volunteer experiment" had failed, and they began a second experiment, "the bifurcated jury."³³ They created two

times been written by the city department that it is supposed to have been investigating. See Judge Drewes's deposition, *supra* note 13, at 21-22.

28. Keith L. Doerge (Chairman), Albert A. Biagini, and John G. Kamena were all volunteers; Mrs. Ida May Brown was nominated by Judge Charles S. Peery.

Perhaps it is also significant that Committee No. 15, which issued an equally stinging report condemning Sheriff Richard D. Hongisto's operation (see S.F. Chronicle, July 30, 1974, at 2, col. 6), was composed of two persons nominated by judges and only one volunteer, because Sheriff Hongisto has long been at odds with most of San Francisco's other political leaders. George Alferitz, Jr., (Chairman), was a volunteer; Stephen K. Louis was nominated by Judge Clayton W. Horn (then the presiding judge) and Elizabeth Spencer Pfau was nominated by the current presiding judge, Robert J. Drewes.

Foreman George Pagni, who actively supported Alioto in his bid for the Democratic nomination for governor, unsuccessfully had moved to strike the reference to Alioto's involvement in the Sunol lease. See S.F. Examiner, Aug. 7, 1975, at 1, col. 5-6.

29. Judge Drewes's deposition, *supra* note 13, at 15-16.

30. See *id.*

31. S.F. Examiner, July 28, 1975, at 1, col. 6.

32. Mayor Alioto, apparently trying to exert further pressure on the current selection process, then wrote a letter to Presiding Judge Drewes calling the 1974-75 grand jury a "mess and a fiasco." See S.F. Chronicle, Aug. 4, 1975, at 3, col. 1.

33. See *id.*, Jan. 28, 1975, at 5, col. 6 (1st ed.).

separate grand juries—one to carry out the function of indicting persons charged by the district attorney and the other to investigate and report on the activities of agencies and government officials in San Francisco. The judges decided that the “criminal” grand jury should be selected randomly from the list of registered voters, but that the “civil” or “investigative” grand jury should continue to be a blue-ribbon panel hand-picked by the judges themselves. The first “indicting” grand jury was impaneled in March 1975, while the 1974-75 grand jury described above continued to serve, without any indicting responsibilities, through the summer of 1975.

The selection of the 1975-76 “civil” or “investigative” grand jury has been through a process even more elaborate and carefully controlled than those of earlier years just described.³⁴ Eighteen of the judges nominated from three to six persons each to comprise a total of seventy-nine persons,³⁵ and seven other names were added to the list, apparently taken from the trial jurors’ list, but without explanation. From these eighty-six names, thirty were summoned as usual to report to Presiding Judge Drewes’s courtroom on July 16, 1975. They were questioned by Judge Drewes and one of the jury clerks, but the real and substantial questions of potential conflicts of interest were not pursued. Nominee Alan Nichols stated, for instance, that he had served on the San Francisco Board of Education and the Library Committee of San Francisco, as well as on many state commissions and federal boards. He further stated that his law firm is representing a client being sued by the City of San Francisco for payment of rent at the San Francisco port, and that he personally was a legal and financial counsel for a nonprofit corporation that was asked by the San Francisco Board of Supervisors to prepare a development program for the port. Mr.

34. The events described in this section have been compiled on the basis of personal observations, see affidavit of Jon Van Dyke, *supra*.

35. The nominees for the 1975-76 grand jury contained an unusually high number of former public officials, including three former members of the San Francisco Board of Supervisors (Roger Boas, Harold Dobbs, and Clarissa McMahon) and three former office holders (Caroline Charles, former Housing Authority chairwoman; Sam Ladar, former police commissioner, and Alan Nichols, former president of the Board of Education). S.F. Chronicle, July 1, 1975, at 29, col. 1.

The presence of such persons on the grand jury would certainly increase the potential for conflicts of interest and—because of continued political ties between the nominees and current office-holders—reduce the *independence* of the grand jury and transform it into simply another political body. As will be discussed more fully below, the grand jury has played such an important role in our country’s history because it has been removed from the centers of power and has been able to take a truly independent examination of the operations of government.

Nichols thus has intimate and personal connection with the major problem areas that the 1975-76 grand jury will face. The presiding judge, nonetheless, did not pursue any of these inquiries and did not excuse Mr. Nichols, whom he had personally nominated.

Twelve other of the original thirty persons whose names were drawn were, however, excused on that first day of questioning for reasons, according to the presiding judge, "that appear in the record,"³⁶ but which have not been publicly or individually explained. The presiding judge then instructed the clerk to draw twelve new names from the drum and ordered the twelve to report to the courthouse the following Tuesday, July 22. After these potential jurors were questioned, Judge Drewes excused seven, asked his clerk to draw seven new names, and ordered them to report nine days later, on July 31. These seven were then questioned, four were excused—again without explanation—and two persons who had been previously summoned were also excused. Six new names were then drawn. On August 5, this process was repeated once again—the six persons summoned to the presiding judge's courtroom (plus one who had been previously drawn but had been vacationing in Europe) were briefly questioned, five were excused and five new names were drawn. The next episode is scheduled for August 14.³⁷

The presiding judge's careful efforts to inpanel a grand jury according to his own particular tastes is unique to plaintiffs' knowledge and certainly undercuts any independence the grand jury might otherwise have. The fact that a large number of defeated local politicians and a significant number of the presiding judge's personal nominees may sit on the forthcoming grand jury smacks of old-fashioned cronyism that has no place in the selection of a body whose job it is to guarantee honest and efficient government.³⁸ The "opportunity to discriminate" that this court worried about in its earlier opinion in this case³⁹ has thus substantially increased in the procedures used in 1975, and the San Francisco Grand Jury is in danger of becoming a body filled with unem-

36. [Notes of Jon Van Dyke, dated July 16, 1975 (on file in Professor Van Dyke's office).]

37. [The selection was still in process when this motion was filed.]

38. It should also be observed that at least one person whom the presiding judge nominated in previous years, Richard O. Herman (who married one of Judge Drewes's close friends 25 years ago) was nominated in 1975-76 by Judge Henry R. Rolph, thus perhaps increasing Judge Drewes's personal control over the grand jury. One of Judge Rolph's other nominees, Clarissa McMahon, was—like two of Judge Drewes's nominees (and like Judge Rolph himself)—a former member of the San Francisco Board of Supervisors.

39. See 378 F. Supp. at 617.

ployed local politicians who are appointed to this high position by former political associates who have become superior court judges.

QUESTIONS PRESENTED

No real dispute remains concerning whether this new "civil" or "investigative" jury will be representative. It will not be. Defendants, however, argue that because they have taken away the grand jury's indicting function they need no longer hew to nondiscriminatory selection procedures. In deciding to continue the personal-selection blue-ribbon approach, defendants have narrowed the issue to be resolved to a question that might be phrased as follows:

Can a grand jury whose functions include investigating and issuing reports on all city agencies and officials, with power to obtain information that is virtually unlimited and with the ultimate power of impeaching any public official, be selected in a manner that would be deemed unconstitutional if the grand jury had the additional task of indicting persons accused of criminal activity?

To plaintiffs' knowledge, no county in the United States has ever "bifurcated" its grand jury in this manner, and so this case in a sense presents a question of first impression. The novelty and importance of this question does not, however, render its resolution difficult. Clearly articulated legal standards of nondiscrimination that have been applied repeatedly to grand jury selections apply equally to this novel institution, because the grand jury's role has always been primarily to investigate and because its power to obtain information requires that this power be given only to a body truly representative of the community. Plaintiffs will explain the legal principles and the policies behind them in depth to indicate why our traditional commitment to representative grand juries must be maintained if the citizens of San Francisco are to have a grand jury that can function free from political influence, bias, or manipulation. Only such an independent grand jury will be able to expose the graft, corruption, and inefficiency that pose a danger to all local governments.

ARGUMENT

I. The Constitutional Standards Governing Grand Jury Selection Are No Different for a Grand Jury Described as "Civil" or "Investigative." The Constitution Requires That All Grand Juries Be Truly Repre-

sentative and Independent. For All the Years Under Attack, the San Francisco Grand Jury Has Never Satisfied The Constitutional Standard and as Such Has Consistently Been Unconstitutional.

A. The United States Supreme Court Has Consistently Required That the Grand Jury Must Be "A Body Truly Representative of the Community."

For at least the past thirty-five years, the United States Supreme Court has consistently required that the grand jury must be "a body truly representative of the community,"⁴⁰ and the Court has repeatedly held that all juries and grand juries must be selected by means that ensure that a cross-section of the community will be represented on the panel.⁴¹

In its earlier opinion in this case, this court ruled that where the "opportunity to discriminate" is clear, as it certainly is under this selection process, it is proper to examine statistics alone to see whether a *prima facie* case of discrimination has been established. If those statistics indicate a substantial underrepresentation over a period of time, then the burden shifts to the government to explain that underrepresentation.⁴² These principles derive from cases arising from selection schemes in the South, where local officials using discretionary selection systems produced juries that underrepresented non-Whites year after year.⁴³

The San Francisco grand jury selection process is susceptible to abuse in just the same manner as were the Georgia, Alabama, and Louisiana systems discussed in *Turner v. Fouche*,⁴⁴ *Carter v. Jury Commission*,⁴⁵ and *Alexander v. Louisiana*.⁴⁶ In fact, the San Francisco selection system contains more opportunities to discriminate, because possibilities for abuse exist at both the nominating stage and the final selection stage. The San Francisco judges not only inevitably discover the race, sex, occupation, and age of their nominees, they in fact *choose*

40. *Smith v. Texas*, 311 U.S. 128, 130 (1940), *quoted in* *Carter v. Jury Comm'n*, 396 U.S. 320, 330 (1970).

41. *See, e.g.*, *Alexander v. Louisiana*, 405 U.S. 625 (1972); *Turner v. Fouche*, 396 U.S. 346 (1970); *Carter v. Jury Comm'n*, 396 U.S. 320 (1970).

42. 378 F. Supp. at 613-15.

43. *See, e.g.*, *Alexander v. Louisiana*, 405 U.S. 625 (1972); *Turner v. Fouche*, 396 U.S. 346 (1970); *Carter v. Jury Comm'n*, 396 U.S. 320 (1970).

44. [396 U.S. 346 (1970).]

45. [396 U.S. 320 (1970).]

46. [405 U.S. 625 (1972).]

these characteristics, making the potential for bias even greater. The statistics gathered together in Appendix A show a significant underrepresentation not only in the racial categories discussed in *Turner*, *Carter*, and *Alexander*, but also in categories of sex, age, and economic status. The burden of explanation thus shifts to the defendants in all of these categories, a burden that the defendants cannot sustain. Rather, Presiding Judge Robert J. Drewes has agreed with plaintiffs that members of underrepresented groups would be just as competent to serve as grand jurors as those now selected to serve.⁴⁷

B. "Civil" Juries Are Held to the Identical Constitutional Standards as Criminal Juries. Defendants' Assertion That a Different Constitutional Standard Applies Is Totally Without Support.

The United States Supreme Court has always required the same standard of cross-representation in the selection of "civil" juries as in the selection of "criminal" juries,⁴⁸ and no reason in logic or experience would justify a different standard for the two. All juries and grand juries are designed to bring the common sense of ordinary citizens into the judicial decision-making process in order to insulate this decision-making from the political forces that control other branches of government.

In *Carter v. Jury Commission*, the United States Supreme Court pointed out that "[o]nce the State chooses to provide grand . . . juries, whether or not constitutionally required to do so, it must hew to federal constitutional criteria in ensuring that the selection of membership is free of racial [and other] bias."⁴⁹ The Court indicated clearly that this standard applies to all grand juries, no matter what functions they perform, although recognizing that a state can use its grand juries to undertake a wide variety of responsibilities.

C. Most Grand Juries Today Are Primarily Investigative Bodies. Nonetheless No Different or Lower Constitutional Standard Has Ever Been Applied or Permitted To Stand.

Defendants' attempt to avoid impaneling a representative grand jury by creating a "civil" or "investigative" grand jury and then arguing

47. See Judge Drewes's deposition, *supra* note 13, at 32, 37.

48. See, e.g., *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946).

49. 396 U.S. at 330 (footnote omitted).

that a different standard applies to such a body must be based on a fundamental misunderstanding about grand juries.

Grand juries have always been primarily investigative bodies. The first grand juries were established solely to perform investigative functions.⁵⁰ Many states (and the federal system) do use grand juries for the purpose of indicting the criminally accused, but the investigating role has always been important.⁵¹ Over half the states in the United States now bring most criminal charges by means of an information and a preliminary hearing, and limit the use of the grand jury to those matters that require extensive investigation and a greater-than-usual need to obtain private information.⁵² California was, of course, one of the

50. The first grand juries were those established in the 11th century by William the Conqueror, who summoned townspeople from all parts of England to answer questions under oath in order to compile information that could be used for various administrative purposes, including the compilation of the Domesday Book, the first modern census. See Note, *The Grand Jury as an Investigative Body*, 74 HARV. L. REV. 590 (1961).

51. The non-prosecutorial grand jury report was utilized with particular impact during the years when the grand jury began to develop as an instrument against despotism. In 1683, for instance, a Chester grand jury report (without an indictment) charged certain Whigs, including the Earl of Macclesfield, with seditious and disloyal conduct. A libel suit followed, in which the defense argued that "it is the constant universal practice" of grand juries to report to the court on any matters concerning the business of the county, and that if the grand jury learned of any national danger, their oath bound them to make "prudent and discreet representations of their fears, and the grounds and reasons of them." The court found for the defense without issuing an opinion, thus upholding the propriety of grand jury reports. See Kuh, *The Grand Jury "Presentment,"* 55 COLUM. L. REV. 1103, 1109 (1955), citing Proceedings between Charles Earl of Macclesfield and John Starkey, Esq., 10 How. St. Tr. 1330.

English grand juries in the 17th and 18th centuries also issued reports criticizing constables and justices for abusive market practices, assessing the supervision by justices of houses of correction, and commenting on "the improper care of bridges, gaols, highways, and other county property, and on justices of the peace who accepted excessive fees." In 1697, an Essex County grand jury criticized a county coroner for "vexing" a coroner's jury that failed to follow his direction regarding a verdict. See *id.*, at 1109-10, citing S. & B. WEBB, *ENGLISH LOCAL GOVERNMENT FROM THE REVOLUTION TO THE MUNICIPAL CORPORATIONS ACT: THE PARISH AND THE COUNTY* 448-56 (1906).

The grand jury report was also in common use in the American colonies, where it was common practice for grand juries to express their opinions on governmental administration. See SCOTT, *CRIMINAL LAW IN COLONIAL VIRGINIA* 70-71 (1930). Grand juries in colonial New Jersey criticized the county government for failure to keep bridges and highways in repair, failure to provide a prison, and neglect of regulating weights and measures, among other things. See *In re Camden County Grand Jury*, 10 N.J. 23, 41-43, 89 A.2d 416, 427-28 (1952).

52. The states that no longer require a grand jury indictment to initiate a criminal proceeding include Arizona, California, Colorado, Idaho, Indiana, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and

first states to move in this direction,⁵³ and California grand juries have for decades been primarily "investigative."

This alteration in the role of the grand jury has not, however, deprived the ancient institution of its importance. Indeed, the freeing of the grand jury from the sometimes humdrum task of passing on every person criminally accused has given this body the time needed to investigate those more serious problems of official wrongdoing that have plagued our governments local and national.⁵⁴ Colorado and Wyoming now view the grand jury as such a useful investigating body that those states have passed legislation authorizing *statewide* grand juries to be impaneled to examine wrongdoings that transcend county borders.⁵⁵ The United States Congress also recognized the importance of grand jury investigations in the 1970 Organized Crime Control Act, when it greatly expanded the types of grand juries that could be impaneled and broadened the grand jury's information-gathering power.⁵⁶

Judge Byron Arnold, when he was presiding judge supervising the 1972 San Francisco Grand Jury, also recognized the paramount importance of the investigations conducted by grand juries. When asked what he considered the most important function of the grand jury (which then, of course, had an indicting responsibility as well) he re-

Wyoming. Four other states (Connecticut, Florida, Louisiana, and Vermont) require a grand jury indictment only for offenses punishable by death or life imprisonment. [J. Van Dyke, *Our Uncertain Commitment to Representative Juries* (book scheduled to be published in Fall, 1976).]

53. See *Hurtado v. California*, 110 U.S. 516 (1884).

54. One commentator described these investigations as follows: "[T]he grand jury is independent and can make investigations on its own motion. Hence, organized crime can be combatted, and investigations into areas where prosecutors, for one reason or another, are unwilling to look, can be made. Here the grand jury has scored notable success in ridding communities of vice and racketeering that was intermingled with official corruption. In 1933 an Atlanta grand jury in the face of court opposition cleaned up a rotten situation involving county commissioners. The same year a Cleveland grand jury exposed a degenerate police and prosecution system. The 1935 exposure of vice and policy rackets in New York by a special grand jury is well known. And in 1937-38, a Philadelphia grand jury was responsible for the ultimate correction of widespread police misconduct." Whyte, *Is the Grand Jury Necessary?*, 45 VA. L. REV. 461, 486 (1959) (emphasis added). See also *In re Camden County Grand Jury*, 10 N.J. 23, 89 A.2d 416 (1952) (describing the revealing investigations undertaken by the Essex County, New Jersey, grand jury); R. HUGHES, ATTORNEY FOR THE PEOPLE: THE STORY OF THOMAS E. DEWEY (1940); Konowitz, *The Grand Jury as an Investigating Body of Public Officials*, 10 ST. JOHN'S L. REV. 219 (1936) (describing the important investigations of the New York City grand jury).

55. See COLO. REV. STAT. §§ 13-73-101 to -108 (1973); WYO. STAT. 7-117.8 (Supp. 1975).

56. See 18 U.S.C. §§ 3331-34 (1970).

sponded that the most important responsibility "is the investigation and inquiry into the operation and management of our various departments of the government. *It is the only body of citizens that has the right to inquire into the operations and functions of the City departments.*" Grand jurors can affect our lives, he concluded, "[b]y seeing to it that our elected officials are carrying out the duties of their offices, faithfully, honestly, intelligently. I guess that would be the main thing that they could do."⁵⁷ The grand jurors are, of course, more likely to fulfill this responsibility if they are selected by a process that ensures their impartiality and independence from city government, i.e., a process that conforms to the constitutional requirements of nondiscrimination that apply to all grand juries and trial juries.

II. The Investigating Power of the Grand Jury and the Important Interests It Is Supposed To Protect and Vindicate Show the Compelling and Substantial Need for an Investigative Grand Jury That Is "A Body Truly Representative of the Community."

The grand jury, especially when performing an investigative function, is an institution through which citizens actively participate in the system of checks and balances that is the touchstone of our democracy. It is a unique body, empowering citizens to investigate whether our public officials are really working for the public interest. The grand jury can and does investigate the executive, legislative, and judicial branches of government to uncover graft, corruption, inefficiency, and any other abuses of power. Only if the public is broadly represented on the grand jury—and only if the selection process insulates the grand jury from political pressure sufficiently to protect its independence—can we be sure that this powerful body will act in the public interest.

Senator Wayne Morse, when he was a professor of law at the University of Oregon, published an extensive study of the grand jury that examined in detail the pros and cons of various selection methods.⁵⁸ Senator Morse emphasized the grand jury's investigations of governmental corruption and found that:

The grand jury always exists in the background as a possible check on any officer or group of officers who fail to keep faith with the public. One Oregon judge put it, "I would hate to see the grand

57. Judge Arnold's deposition, *supra* note 12, at 8 (emphasis added).

58. See Morse, *A Survey of the Grand Jury System* (pts. 1-2), 10 ORE. L. REV. 101, 217, 295 (1931).

jury abolished as the fear of grand jury investigations no doubt holds down much fraud and corruption in local government.”⁵⁹

Senator Morse interviewed hundreds of judges throughout the country, and it is significant that 40 percent of those interviewed favored a completely random method over any other method, even at a time when most jurisdictions were hand-picking both grand jurors and trial jurors. Senator Morse explained why so many judges preferred the random selection method as follows:

Some of the 187 judges who favored the selection of grand jurors purely by lot supported their position with arguments to the effect that *such a method is free of political favors and places an equal obligation on all qualified voters to assume their civic responsibilities*. Then, too, many of them expressed the belief that *the general public has greater confidence in the decisions of a jury that does not owe its appointment to individuals who might possibly be interested in and affected by the evidence considered by the jury*. In the words of one judge, *“Hand-picked grand juries are of little value in investigating political fraud and municipal corruption. If selected by an official who is a member of the political group being investigated, the public will not have faith in them and often justifiably so. If selected by an official on the other side, there is the danger that spite and politics may dominate the grand jury actions.”*⁶⁰

The reasoning of these judges clearly applies to San Francisco too: San Franciscans are entitled to and need a grand jury that will investigate government graft, corruption, and efficiency without bias or manipulation, and only a grand jury freed from all political influence can perform such a function.

A major reason why the grand jury has continued to be viewed as such a useful institution is that it has a unique power to obtain evidence. Grand juries have an authority to demand answers from government officials and private citizens that goes far beyond the power given to *any* other law enforcement body. The constitutional privileges and protections that can be asserted to avoid responding to the inquiries of the police, the FBI, or any other law enforcement body do not shield one from a grand jury inquiry. In 1972 the United States Supreme Court stated that “the longstanding principle that ‘the public has a right to every man’s evidence’ . . . is particularly applicable to grand jury proceedings,”⁶¹ and in 1974 the Court applied that rule to the president of the United States.⁶²

59. *Id.* at 233-34.

60. *Id.* at 237-38 (emphasis added).

61. *Branzburg v. Hayes*, 408 U.S. 665, 688 (1972).

62. *See United States v. Nixon*, 418 U.S. 683 (1974).

Statutes in California similarly give local grand juries broad authorization to conduct investigations and to demand information. The basic power to subpoena information is given to the grand jury in Penal Code section 939.2.⁶³ Through this statutory grant, the grand jury is empowered to institute and initiate inquiries as it deems appropriate and to obtain any and all information necessary to resolve its concerns.⁶⁴ Persons called before the grand jury—including the persons under investigation—are obliged to testify and “can claim only the privilege protecting a witness from self-incrimination.”⁶⁵

California Penal Code section 925⁶⁶ instructs county grand juries to inspect all county records, especially fiscal records, and a 1973 amendment⁶⁷ extends this power to the records of cities within the county.⁶⁸ The grand jury is also assigned the duty of investigating and

63. CAL. PEN. CODE § 939.2 (West Supp. 1975).

64. *In re Peart*, 5 Cal. App. 2d 469, 473, 43 P.2d 334, 336 (1935).

65. *In re McDonough*, 21 Cal. App. 2d 287, 288, 68 P.2d 1020, 1020-21 (1937), *aff'd*, 9 Cal. 2d 90, 68 P.2d 1021 (1937). *See also In re Hoertkorn*, 15 Cal. App. 2d 93, 96, 59 P.2d 218, 219 (1936); *In re Lemon*, 15 Cal. App. 2d 82, 91, 59 P.2d 213, 217 (1936).

An example of the grand jury's power to subpoena information can be seen by examining the case of *Samish v. Superior Ct.*, 28 Cal. App. 2d 685, 83 P.2d 305 (1938). The Sacramento County Grand Jury had begun an investigation of bribery and corrupt lobbying practices in the state legislature, and issued a subpoena duces tecum to Arthur Samish, ordering him to appear before the grand jury with copies of his federal and state tax returns for the years 1935, 1936 and 1937. Samish was a lobbyist in Sacramento, and was thought to be one of the most powerful men in the state. He petitioned for a writ of prohibition, not on self-incrimination grounds, but rather on the grounds that the tax returns were confidential.

The court of appeal denied the writ, and upheld the authority of the grand jury: “A grand jury is not deprived of jurisdiction to investigate asserted public offenses merely because its members are uncertain as to whether a crime was actually committed . . . or because of a lack of identity of the particular individual who perpetrated the crime.” *Id.* at 689.

The investigation being proper, the court held that the grand jury had the power to compel Samish to disclose his income tax information in the absence of an assertion of the self-incrimination privilege. The confidentiality of tax returns applied only to the originals in the hands of the tax officials, and not to copies in the hands of the petitioner. *See id.* at 693.

The grand jury in California thus seems to have almost unlimited authority to pursue information within its statutory realm of authority, and that realm is itself virtually unlimited.

66. CAL. PEN. CODE § 925 (West Supp. 1975).

67. *See id.* § 925a.

68. Section 925 has been broadly interpreted by the attorney general's office to permit the grand jury to examine the records of school service funds and immigration districts. *See* 30 OP. CAL. ATT'Y GEN. 125 (1957); *see* 15 OP. CAL. ATT'Y GEN. 151 (1950).

California grand juries also have the power to investigate sales and transfers of land

reporting on the needs of all county officers, "including the abolition or creation of officers and the equipment for, or the method or system of performing the duties of, the several offices."⁶⁹ Grand juries impaneled in even-numbered years are assigned the duty of investigating the "needs for increase or decrease in salaries of the county . . . district attorney, and the auditor."⁷⁰ The grand jury may also investigate the need for an increase in the salaries of members of the board of supervisors "as often as may be required"⁷¹

Penal Code section 919 assigns still another important responsibility to California's grand juries. Subsection (a) provides for the investi-

which might escheat to the state (CAL. PEN. CODE § 920 (West 1970)), and can order the district attorney to "institute suit to recover any money that, in the judgment of the grand jury, may from any cause be due the county." CAL. PEN. CODE § 923 (West 1970).

69. CAL. PEN. CODE § 928 (West 1970).

70. *Id.* § 927 (West Supp. 1975).

71. *Id.* § 927. These statutory sections indicate that California's grand juries have the power to pick almost any topic for investigation, and *in fact our county grand juries have roamed across the entire spectrum of possible topics in their recent investigations*. One recent commentator has summarized some of the topics investigated by California grand juries in the 1960's as follows:

"In the area of education, for example, two consecutive grand juries in Sacramento County looked into and opposed the Sacramento City Schools' plans for school desegregation. Alameda County's 1965 grand jury studied student disorders at the University of California's Berkeley campus and made a series of recommendations calling for the University administration to take tougher action to prevent use of the campus for unlawful activities. This investigation into the conduct of a state agency was approved in advance by the Alameda County Superior Court and justified on the grounds that student disturbances on and off campus placed a burden on the county's law enforcement agencies and court system, and thus was a proper exercise of the grand jury's duty to inquire into the needs and operations of county government. Also in the field of education, grand juries have recommended that instruction in 'Citizenship and Law Enforcement' be included in the high school curriculum, that health and sex education classes be instituted to arrest the 'alarming' rate of venereal disease, that high school counselors place more emphasis on vocational education, that a teacher recruitment program be instituted, and that a study be conducted on innovations in the teaching of social sciences.

"In other fields, grand juries urged that the county hospital be closed and indigents cared for through contract with private hospitals, that job training programs for welfare recipients be expanded, that day care nurseries be expanded to allow welfare recipients to accept employment, that a child adoption service be established, that more effective programs be planned to treat alcoholics, that family planning services in poverty areas be improved, and that a program for purchase and development of park facilities be implemented. One grand jury urged a complete overhaul of rules, regulations, financial controls and administration of welfare programs and an immediate moratorium on 'any additional welfare liberalization.'

"A major topic for many grand juries was the rising use of drugs and narcotics among young people. One grand jury conducted a public hearing, after which it stated its intention to make the problem of illegal drug use its first order of business, other grand juries made recommendations ranging from a compulsory drug education program

gation of the case of "every person imprisoned in the jail of the county on a criminal charge and not indicted." Subsection (b) directs the panel to inquire into the condition and management of prisons within the county. Perhaps most significant, however, is subsection (c), which provides for the investigation of "willful or corrupt misconduct in office of public officers of every description within the county."⁷²

How these delicate inquiries are undertaken will obviously depend on the composition of the grand jury. If the grand jurors are hand-picked by the judges, who frequently obtain their jobs because of close contact with other public officials, then they are substantially less likely to investigate carefully the acts of those public officials. The grand jurors would be tempted to turn away from misconduct for fear of embarrassing those who nominated them for the grand jury position. This result is particularly likely when the judges obtain their nominees from persons currently in public office, as when the presiding judge forwards the recommendations of members of the board of supervisors.⁷³ If the judges nominate persons who have served in public office previously, as many did for the 1975-76 grand jury, then the grand jurors will have important links with the very officials they are supposed to investigate. Not only will the possibility of partiality or outside manipulation be high, but the appearance of fairness essential to the effectiveness of this ancient institution will be missing. The matter is especially important in an era of absence of confidence in government and the political process.

The necessity for an absolutely impartial and independent grand jury is finally driven home by Government Code section 3060, which vests in the grand jury an *impeachment function*. That section provides: "An accusation in writing against any officer of a district, county, or city, including any member of the governing board of a school district, for wilful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors."⁷⁴ When such an accusation is made, it is to be delivered to the district attorney,⁷⁵ who shall have a copy served upon the defendant, along with a notice to

in the schools to the development of a central county agency for narcotics information." Mar, *The California Grand Jury: Vestige of Aristocracy*, 1 PAC. L.J. 36, 62-63 (1970) (footnote omitted).

72. CAL. PEN. CODE § 919 (West 1970).

73. See Judge Drewes's deposition, *supra* note 13, at 6.

74. CAL. GOV'T CODE § 3060 (West 1966).

75. *Id.* § 3062 (West 1966).

appear in superior court.⁷⁶ The defendant is provided a trial by jury,⁷⁷ and upon conviction is removed from office.⁷⁸

Although this procedure has seldom been used in recent years, it is certainly a powerful tool for the grand jury to have at its disposal. Section 3060 of the Government Code has been construed broadly by the courts: "The main purpose of the accusation . . . is to remove a person from office for misconduct in such office; the misconduct charge need not necessarily include an act which would itself constitute a crime, and if it does include a crime the judgment on accusation would not be a bar to a subsequent prosecution for such crime."⁷⁹ "The phrase 'misconduct in office' is broad enough to include any willful malfeasance, misfeasance, or nonfeasance in office."⁸⁰ Under this statu-

76. *Id.* § 3063.

77. *Id.* § 3070.

78. *Id.* § 3072. Because this clause gives the grand jury only the power to begin a procedure leading to the removal of a public official from office, rather than to the imposition of a criminal conviction, and because the accusation need not be based on any criminal violation (see note 80 *infra*), one must assume that this power remains with the "civil" or "investigative" grand jury rather than being assigned to the "criminal" or "indicting" grand jury.

79. *In re Burleigh*, 145 Cal. 35, 37, 78 P. 242, 243 (1904). See also *People v. Harby*, 51 Cal. App. 2d 759, 767, 125 P.2d 874, 877-78 (1942); *Reid v. Superior Ct.*, 44 Cal. App. 349, 356, 186 P. 634, 637 (1919).

80. *Coffey v. Superior Ct.*, 147 Cal. 525, 529, 82 P. 75, 76 (1905), citing *State ex rel. Tilley v. Slover*, 113 Mo. 202, 208, 20 S.W. 788, 789 (1892). See *People v. Elliott*, 115 Cal. App. 2d 410, 420, 252 P.2d 661, 667 (1953). "[T]he phrase 'willful or corrupt misconduct in office' does not necessarily imply corruption or criminal intention. It means 'simply a purpose or willingness to commit the act;'—'a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act.'" *People v. Becker*, 112 Cal. App. 2d 324, 326, 246 P.2d 103, 104 (1952), quoting CAL. PEN. CODE § 7(1), (3) (West 1970). All that is required is "a purpose or willingness to commit the proscribed act or to be guilty of the omission." *People v. Hale*, 232 Cal. App. 2d 112, 118-19, 42 Cal. Rptr. 533, 537, (1965), citing *In re Burleigh*, 145 Cal. 35, 37, 78 P. 242, 243 (1904); *People v. Elliott*, 115 Cal. App. 2d 410, 414, 252 P.2d 874, 878 (1953); *People v. Becker*, 112 Cal. App. 2d 324, 326, 246 P.2d 103, 104 (1952); *People v. Harby*, 51 Cal. App. 2d 759, 767, 125 P.2d 874, 878 (1942). "The official doing of a wrongful act, or official neglect to do an act which ought to have been done, will constitute the offense although there was no corrupt or malicious motive." *Coffey v. Superior Ct.*, 147 Cal. 525, 529, 82 P. 75, 76 (1905). Thus, "it is not necessary that the accused committed the acts or omissions charged with an intent to commit misconduct. Nor is it necessary that the accused knew that the acts or omissions charged constituted misconduct in office." *People v. Mullin*, 197 Cal. App. 2d 479, 486, 17 Cal. Rptr. 516, 519-20 (1961).

"In summary, if an official commits a crime in connection with the operation of his office, or willfully or corruptly fails or refuses to carry out a duty prescribed by law or by the charter, if any, under which he holds his position, or if his conduct as such officer is below the standard of decency rightfully expected of a public official such as drunkenness during work hours or a gross and repeated failure to carry out his official

tory authority, the appellate courts have upheld the removal from office of a sheriff who willfully refused to investigate a complaint of child molestation,⁸¹ and school officials for conflict of interest.⁸²

Because of this unique power to bring about the removal of an official elected by the public or appointed by an elected official, it is important that the grand jury be broadly representative of the community. If the panel represents only the narrow segment of the community that holds political power, it may tolerate situations where officials serve the needs of that one interest group, but otherwise fail to fulfill their obligations to the public. In fact, one can speculate that the reason this provision has been so infrequently used in recent years may perhaps be related to the selection procedure that fills the grand jury with persons who are acquaintances of those in power whom they are supposed to investigate.

Even the most high minded and honorable persons have biases, preferences, and subconscious concerns, and these subconscious concerns will be enlarged if the grand jurors have had extensive prior personal contact with those they are empowered to investigate. Grand jurors who are past members of the board of supervisors or who have held other political offices are unlikely to be as aggressive as they might be in probing the agencies of city government, if the former officials are still allied to those currently in power; if they are at odds with those currently in political office they may use their position on the grand jury for partisan political ends. The public would lose in either situation. Plaintiffs insist that it is essential that each and every grand juror be free from *all potential conflicts of interest* in order to ensure the independence of the grand jury. The present selection system leads to the opposite result.

III. The Interests Defendants Advance To Justify a Blue-Ribbon Grand Jury Are neither Compelling nor Substantial; Therefore the Personal Selection System Has No Adequate Justification and Must Be Changed to a System Conforming to Constitutional Standards.

routine in a timely and appropriate manner, he may be removed from his office as the result of an accusation. Such misconduct in office may be corrupt or merely wilful." *People v. Hale*, 232 Cal. App. 2d 112, 119, 42 Cal. Rptr. 533, 538 (1965); 2 B. WITKIN, CALIFORNIA CRIMES, *Crimes Against Governmental Authority*, § 874, at 820-21 (1963).

81. See *People v. Mullin*, 197 Cal. App. 2d 479, 17 Cal. Rptr. 516 (1961).

82. See *People v. Elliott*, 115 Cal. App. 2d 410, 252 P.2d 661 (1953); *People v. Becker*, 112 Cal. App. 2d 324, 246 P.2d 103 (1952).

Presiding Judge Robert J. Drewes gave the following explanation of why he prefers a blue-ribbon panel for his "civil" or "investigative" grand jury when his deposition was taken:

QUESTION: Do you have any view as to whether the investigative grand jury ought to be . . . a so-called blue ribbon grand jury, in the sense of possessing a higher or special level of skills or expertise as opposed to being a cross-section or representative grand jury, if those two should conflict?

JUDGE DREWES: Yes, yes. I think it should be composed of highly qualified persons who have the time and the interest to do the job. In other words, I don't think a randomly selected grand jury would be able to function on the civil side of its responsibilities, because I don't think you'd have the time. I think the court would be continuously faced with the problem of keeping a quorum functioning, and I base that simply on my experience with the trial jurors.

QUESTION: Would you have any problems with the notion of a randomly selected pool of grand jurors which was then narrowed down by whether or not the person had the time and inclination to serve?

JUDGE DREWES: I don't think they'd have the requisite experience to do so, the knowledge to enable it—let me put it this way. Over the years, the grand jury has been severely criticized because it simply wasn't able to do the job that is required of it by statute. In fact, to the point where on many occasions the report that is required of them about the agency being investigated has been written by the executives of the agency.

QUESTION: We are familiar with a few examples of that.

JUDGE DREWES: That is the sort of thing that led me to the conclusion that a better job would be done for the County if persons qualified by experience and training to do the job were put in that position.⁸³

Judge Drewes's perspective on this issue is not a novel one. Rather it is the perspective that the San Francisco Superior Court judges have been acting upon for many years in trying to select their grand jurors. The Honorable Byron Arnold, the presiding judge in 1972, articulated a similar view when his deposition was taken:

QUESTION: You were quoted in an interview from a reporter in the San Francisco Chronicle on September 20, 1972, in connection with the filing of this case as saying, and I am quoting from the report in that newspaper, "We don't want people from the voter lists or the telephone book. We should have the finest, most capable people that it's possible to get. They should be a cross section of the better elements of the community." You, in fact, made that statement?

83. Judge Drewes's deposition, *supra* note 13, at 21-22.

JUDGE ARNOLD: Yes. That's exactly my philosophy on the subject.

QUESTION: What did you mean by the comment that the Grand Jurors represented a cross section of the better elements of the community?

JUDGE ARNOLD: *The better elements of the community* so far as the Grand Jury is concerned. So far as I am concerned and mean is that they were to have an interest in our society and in our community life, and have a desire to do what they can toward bettering that civil situation.⁸⁴

These statements are the only arguments that defendants have thus far offered to sustain the burden of explanation imposed upon them by the prima facie case of discrimination that plaintiffs have demonstrated.⁸⁵ These explanations are, however, wholly inadequate and themselves show the inherent biases and manipulation of the present selection scheme. The defendants have assumed that it is proper for them to determine what needs to be investigated and how that investigation should be conducted. The legislature, however, envisioned the grand jury as an *independent* body that would formulate its own plans for investigation, and this has been the historical reason why this ancient institution has been preserved through the centuries.

Defendants furthermore seem to be erecting a requirement of some professional education and high level of intelligence as a minimum standard of qualification for grand jury service. Educational qualifications of this sort are not, however, neutral in our society, and the United States Court of Appeals for the Ninth Circuit has specifically condemned tests that measure more than average intelligence.⁸⁶

American history contains many examples of independent grand juries that have confronted and exposed governmental corruption, and many other examples of docile, controlled grand juries that have sat idly by while elected officials enriched themselves at the expense of the public. In most of the colonies of pre-1776 North America, jurors and grand jurors were hand-picked by the sheriff, who was hand-picked by the British Crown, and as a result only the largest landholders became members of these largely docile bodies.⁸⁷ In Virginia, however,

84. Judge Arnold's deposition, *supra* note 12, at 38 (emphasis added).

85. For another phrasing of this argument, see *Quadra v. Superior Ct.*, 378 F. Supp. 605, 625 (N.D. Cal. 1974).

86. See *Carmical v. Craven*, 457 F.2d 582, 588 (9th Cir. 1971), *cert. denied*, 409 U.S. 929 (1972), *cited in Quadra v. Superior Ct.*, 378 F. Supp. 605, 616 n.14 (N.D. Cal. 1974).

87. See, e.g., R. YOUNGER, *THE PEOPLE'S PANEL: THE GRAND JURY IN THE UNITED STATES* 5 (1963).

the grand jurors were selected in a more random fashion, and these more independent grand jurors frequently made unusually probing and embarrassing examinations of governmental activities. The Royal Governor, Francis Nicholson, became upset at this activity and issued a proclamation in 1690 (somewhat akin to the order involved in this case) instructing the local sheriffs to select grand jurors only "from the most substantial inhabitants of your cities."⁸⁸ Nine years later, the Virginia General Assembly defined more particularly the requirements for jury service, saying that jurors in the General Court must be freeholders whose real and personal property are visibly of the reputed value of 100 pounds sterling.⁸⁹ These decrees substantially ended the independence of the Virginia juries and reduced the potential for embarrassment to the Crown.

In the colony of Massachusetts, the sheriff originally selected all grand jurors, but in the early 18th century the colonists were able to wrest away the sheriff's power and instead gave that power to the town meetings held in all communities. This change became particularly important during the turbulent years before the American Revolution. When the Royal Governor asked the grand jury to investigate the frequent disturbances connected with anti-British activity, the colonists were able to thwart the investigation by selecting as grand jurors persons who had played leading roles in the disturbances.⁹⁰ After the Boston Tea Party of 1773, the British House of Commons passed an elaborate statute called the Port Bill revising local government in Massachusetts and requiring that the King's Sheriff choose grand jurors and trial jurors from a list of freeholders. This move was protested vehemently and the few token persons opposing the British rule who were selected for the grand jury—men like Paul Revere and John Hancock's brother Ebenezer—refused to take their oaths as grand jurors.⁹¹

But to find examples of the importance of the independent and impartial jury, we need not look into such distant history nor beyond the borders of our own community. San Francisco has in the past suffered from corrupt government that should have been exposed by a vigilant grand jury. Instead, because our grand jurors are hand selected by the judges, who frequently have close ties to elected and appointed officials, many abuses have persisted without investigation.

88. *Id.* at 10.

89. III LAWS OF VIRGINIA 175-76 (W. Hening ed. 1823).

90. J. MILLER, ORIGINS OF THE AMERICAN REVOLUTION 286-87 (1959).

91. R. YOUNGER, THE PEOPLE'S PANEL: THE GRAND JURY IN THE UNITED STATES

Consider the situation that existed in the first decade of this century. In 1901 persons in the labor movement decided to seek control of the San Francisco municipal government under the banner of the Union Labor Party. A North Beach Republican named Abraham Ruef, who had been frustrated in his attempts to gain control of the Republican organization in the city, decided to take a hand in the formation of the new party. Ruef's tightly-disciplined operatives easily infiltrated and gained control of the new party structure and secured the nomination of Musicians' Union President Eugene Schmitz for mayor. Schmitz received a plurality of the votes in a three-way contest, and Ruef quickly became the power behind the throne, gradually installing persons loyal to him in official positions. Ruef held no office himself, but was nonetheless the pivotal figure in an elaborate graft scheme. Persons and corporations who needed the cooperation of the city government would pay "attorney's fees" to Ruef, who would then see that their interests were catered to, sometimes sharing his fee with various officials. Schmitz was re-elected twice, and in the 1905 election, Ruef's entire slate was victorious.⁹²

The city's newspapers had by this time become increasingly vociferous in their denunciations of municipal corruption, but their protests were to little avail, partly because San Francisco's grand juries for much of Schmitz's tenure were subservient to Ruef.⁹³ Grand jurors were selected in a manner similar to the system under attack in this law suit—each of the 12 judges nominated 12 persons and then 19 jurors were selected by lot from the pool of 144.⁹⁴ Several of these judges were subject to the influence of Ruef,⁹⁵ including at least one who was "hand in glove with Ruef."⁹⁶

The grand jury impaneled in 1906 was notoriously subservient to Ruef.⁹⁷ This panel was selected through the machinations of the grand jury secretary, Myrtille Cerf, who was a confederate of Ruef. Cerf had determined the nineteen most favorable nominees before the drawing, and had folded the slips bearing their names together in a packet,

32 (1963).

92. L. THOMAS, *A DEBONAIR SCOUNDREL: AN EPISODE IN THE MORAL HISTORY OF SAN FRANCISCO* 6-40 (1962) [hereinafter cited as THOMAS].

93. *Id.* at 27.

94. W. BEAN, *BOSS RUEF'S SAN FRANCISCO: THE STORY OF THE UNION LABOR PARTY, BIG BUSINESS AND THE GRAFT PROSECUTION* 162 (1952) [hereinafter cited as BEAN].

95. THOMAS, *supra* note 92, at 28, 75, 81.

96. *Id.* at 115.

97. *Id.* at 47, 80.

which he was able to feel when he placed his hand in the box at the official drawing. Thus, he was able to draw the names of nominees most favorable to Ruef in a process that appeared to be impartial.⁹⁸ Freemont Older, editor of the San Francisco Bulletin, discovered this fraudulent selection process, and when Special Prosecutor Francis J. Heney initiated his prosecutions, Heney realized that the grand jury would be an obstacle. Older persuaded Presiding Judge Thomas F. Graham to discharge the panel and announce the selection of a new one.⁹⁹ Free of Ruef's influence, and finally independent, the new grand jury promptly indicted Ruef, Schmitz and a number of their confederates, who were duly prosecuted and convicted.

The selection of the 1975-76 grand jury has been manipulated and controlled to almost the same extent as was that of the 1906 grand jury, and, although plaintiffs assume that the motives of the defendants are on a much higher plane than those of Abraham Ruef, the conscious manipulation of the selection procedure cannot help but reduce the independence and impartiality of the resulting grand jury. Rather than the independent body it has historically been, the 1975-76 San Francisco Grand Jury will be nothing more than the personal creation of the presiding judge.

In maintaining their system of personal selection, the defendants are not only unwittingly undermining a crucial governmental institution, but also turning their backs on the legitimate aspirations of non-Whites, women, the poor, and the young, who have just as much of a right to serve on a "civil" or "investigative" grand jury as on a "criminal" grand jury. A recent report of the United States Commission on Civil Rights stressed the importance of the grand jury's investigative role and the importance of minority representation on the grand jury as follows:

To the extent that the grand jury considers criminal cases, the presence of minority jurors minimizes the possibility that prejudice will affect its deliberations or that laws will not be enforced to protect minority groups. *Equally important for minority groups is the grand jury's primary function of investigating and evaluating the administration of local government and the actions of county and city officials.* The effect upon administrative practices of the often scathing criticisms contained in grand jury reports—and the resultant publicity—should not be underrated. All in all, a sympathetic and vigilant grand jury could exercise a significant influence in preventing or correcting misconduct toward minorities.¹⁰⁰

98. BEAN, *supra* note 94, at 162; THOMAS, *supra* note 92, at 80.

99. BEAN, *supra* note 94, at 162.

100. U.S. COMM'N ON CIVIL RIGHTS, MEXICAN-AMERICANS AND THE ADMINISTRATION OF JUSTICE IN THE SOUTHWEST 113 & Appendix B, at 12 (1970) (study by California Rural Legal Assistance).

The grand jury has historically been given broad powers because it has been the people's watchdog into the operations of government. Its claims to legitimacy rest, however, upon its being representative of the community at large. Grand jurors can be relied upon to use their almost unlimited power wisely only if they bring to their investigations and deliberations the diverse viewpoints of the community which allow the grand jurors to act as our collective conscience.

A grand jury composed largely of the affluent and successful members of our community is unlikely to investigate the concerns of the poor. An affluent grand jury might, for instance, choose to investigate the banking practices of the city and ignore problems of low-income housing. Or an affluent grand jury may ignore the problems of hiring discrimination within city agencies. Persons from all sectors of the city should be involved in deciding how the grand jury should use its time and exercise its authority.

A commentator who examined the diverse investigations of California's grand juries in the 1960's¹⁰¹ concluded his summary with the following warning:

The wisdom of these recommendations is not at issue. *What these recommendations show is that grand juries which often are picked from a small, elite segment of the community are delving into policy matters that are of concern to and directly affect the total community.* The successful and well-educated do not have a monopoly of wisdom on drug abuse or welfare policies or the adequacy of hospital services. *The "blue-ribbon" grand jury is deprived of the insight and perspective of a substantial part of the community that does not operate in the same circle as Superior Court judges.* Many of the county agencies that concern the grand jury are utilized primarily by persons from lower socio-economic groups in the society, and their views as to the adequacy of county services and priorities should enter into grand jury deliberations. *It does not answer the issue to state that grand juries can only recommend and do not determine the ultimate policy; this is no more valid than arguing that bad government is tolerable so long as there is a check further on down the line.*¹⁰²

Plaintiffs contend that the interests that might be protected by a blue-ribbon grand jury are totally insufficient, as explained by defendants, to overcome the compelling and substantial interests of non-Whites, women, the young, and the poor who have a *right* to be on the grand

101. See note 71 *supra*.

102. Mar, *The California Grand Jury: Vestige of Aristocracy*, 1 PAC. L.J. 36, 62-63 (1970) (footnotes omitted) (emphasis added).

jury and a *right* to have their interests represented along with the interests of the blue-ribbon community.

CONCLUSION

Defendants have agreed that the grand jury that indicts must be representative. But they have, without precedent or authority, split off the crucial investigative function and sought to control it and keep it as part of their own domain. The law requires that defendants be ordered to select grand jurors randomly from some neutral list, like the list of registered voters, in order to ensure that the grand juries of San Francisco are truly independent and impartial. Such an order is required by the United States Constitution, because defendants have repeatedly and consistently demonstrated that they are unable to impanel a fair cross-section of the community through their present system of nominating their friends and acquaintances. The statistics assembled in Appendix A demonstrate unmistakably that the dramatic underrepresentation of non-Whites, women, the poor, and the young continues unabated at the present time.

A change to a more neutral selection method, already half accomplished, is simple, practical, will help restore confidence in an important governmental institution, and will likely improve the quality of our grand juries. A recent commentator, Deputy Attorney General A. Wells Peterson, reported his findings of grand juries in other parts of California as follows:

Three counties in California—Butte, Merced, and Ventura—now impanel a single, randomly selected grand jury. Public officials contacted in these counties reported grand juries selected by this system have been of *high quality*.¹⁰³

San Francisco is similarly filled with competent citizens who would undertake the high responsibility of grand jury service with diligence and care. The patronizing attitude of the defendants who think that only their acquaintances can perform this service is an insult to the non-Whites, women, younger people, and those not fortunate enough to be wealthy or live in elite neighborhoods, all of whom have been systematically excluded from what should be a vigorous and independent instrument of effective government. The defendants' personal selection method is no more constitutionally permissible for the investigative grand jury than for the indicting grand jury and must be remedied by this court.

103. Peterson, *The California Grand Jury System: A Review and Suggestions for Reform*, 5 PAC. L.J. 1, 7 (1974) (emphasis added).

STATISTICS

[In several affidavits accompanying the statistics in Appendices A and B, affiants described in varying degrees of detail the methods by which they collected their data. Affiant Douglas P. Elliott elaborated on the sources for each category of statistics:]

A. Information on age was obtained from questionnaires [sent to all grand jury nominees] and phone conversations [with nominees who did not return the questionnaires].

B. Information on race was obtained in the following ways: Anglo-Europeans and Blacks were self-identified through the questionnaires and phone conversations described above. Some Asians and persons of Hispanic descent were identified in the same manner, while the rest were identified on the basis of their surnames. Thus, it was concluded that all persons of Asian and Hispanic background were identified, and all persons remaining in the "unknown" category must be either Anglo-European or Black.

C. Information on sex was readily obtainable from the names of the individuals, and the fact that the females were listed in public records as "Miss" or "Mrs."

D. Information on occupation was obtained from the public lists of grand jury nominees. Particular occupations were classified as "white collar" or "blue collar" in accordance with the definitions and classifications of the United States Bureau of Census.

E. Information on income was derived from questionnaires and telephone conversations.

F. Information on geographic area was obtained by taking the addresses listed in public records and locating these addresses on a map of San Francisco, which had been marked to indicate the geographic boundaries of the poverty areas.

[A second affiant, Kevin V. Reilly, described the method by which a number of law students obtained racial and income data from persons who were nominated or who volunteered to serve on the San Francisco grand jury for the years 1970 through 1974-75 and about whom plaintiffs had not previously gathered such information:]

Using the names and addresses of potential grand jurors obtained from public records, the law students attempted to obtain telephone numbers from the telephone directory or from the telephone company's information service. If the number was found and the potential juror reached, the caller explained who he or she was and the reason the

call was being made. Each person was then asked (1) what his or her race or ethnic group is and (2) whether his or her family income was above or below \$11,000 in the year he or she was a potential grand juror. In a few instances, the potential juror was unavailable, and the information was obtained from a member of the family.

Answers were received from approximately 25 percent of those potential jurors we attempted to reach, and those answers are included in the data in Appendix A. Many of the people to be called had moved or had unlisted numbers. Many refused to answer. Others were never at home when called, although all the numbers were called a number of times.

[In a third affidavit, attorney Ruth Astle, who had furnished statistics concerning the demographic composition of the San Francisco grand jury to the plaintiffs in *Quadra*, described that the information had resulted from letters, telephone conversations, and personal interviews, and added that the data had been collected "with enormous care because of the important issues involved in grand jury selection."

The fourth affidavit is set out in full, as extensive reference is made to it throughout:]

I, JON VAN DYKE, hereby depose and say:

1. I am a Professor of Law at the Hastings College of the Law and one of the attorneys for the plaintiffs in this case;

2. I have personally viewed the selection of the 1972 San Francisco Grand Jury and many of the sessions in which the 1975 grand jury was selected;

3. For those sessions that I was unable personally to attend, I have asked law students under my supervision to attend and to report to me what transpired at these sessions;

4. This work has been undertaken with as much care as is humanly possible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this sixth day of August, 1975, at San Francisco, California.

s/Jon Van Dyke
JON VAN DYKE

Appendix A

In the data that follow, plaintiffs have used the term "Rate of Error" to give some indication of the extent of under- or over-representa-

tion that has existed on San Francisco's grand juries. The "Rate of Error" is obtained by taking the difference between the percentage a given demographic group has on a grand jury and the percentage that demographic group has in the County of San Francisco, and then dividing that figure by the demographic group's percentage of the county population. Thus, if males constituted 50 percent of the county population, but held 80 percent of the seats on the grand jury, the "Rate of Error" would be: $80 - 50 = 30 \div 50 = +60$. In this example, the "Rate of Error" for females would be: $20 - 50 = -30 \div 50 = -60$. If the figure is preceded by a plus (+) sign, that population group is *over*-represented, and if the figure is preceded by a minus (—) sign, the population group is *under*-represented. Any over- or under-representation of more than 20 percent should be viewed with concern, particularly if it persists over several years.

Sex

San Francisco Population—1970 Census (Over 18)

	Number	Percent
Male	264,585	47.6
Female	291,213	52.4
Total	555,798	100.0

1970 Grand Jury

	All Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Male	98	83.8	+76.1	23	76.7	+61.1
Female	19	16.2	-69.1	7	23.3	-55.6
Total	117	100.0		30	100.0	

1971 Grand Jury

	All Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Male	105	84.7	+77.9	27	90.0	+89.1
Female	19	15.3	-70.8	3	10.0	-80.9
Total	124	100		30	100	

1972 Grand Jury

	All Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Male	102	79.7	+67.4	26	86.7	+82.1
Female	26	20.3	-61.3	4	13.3	-74.6
Total	128	100		30	100	

1973 Grand Jury

	<u>All Nominees</u>		<u>Finalists</u>		Number	<u>Grand Jurors</u>			
	<u>Number</u>	<u>Percent</u>	<u>Rate of Error</u>	<u>Number</u>		<u>Percent</u>	<u>Rate of Error</u>		
Male	89	76.7	+61.1	22	73.3	+54.0	14	73.7	+54.8
Female	27	23.3	-55.5	8	26.7	-49.0	5	26.3	-49.8
Total	116	100		30	100		19	100	

1974-1975 Grand Jury—Nominees Only

	All Judicial Nominees			Finalists			Grand Jurors		
	Number	Percent	Rate of Error	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Male	69	68.3	+43.5	9	64.3	+16.7	6	60	+26.1
Female	32	31.7	-39.5	5	35.7	-31.9	4	40	-23.7
Total	101	100		14	100		10	100	

1974-75 Grand Jury—Nominees & Volunteers

	Finalists		Grand Jurors			
	Number	Percent	Rate of Error	Number		Percent
Male	26	65.0	+36.6	14	73.7	+54.8
Female	14	35.0	-33.2	5	26.3	-49.8
Total	40	100		19	100	

1975 Grand Jury

	All Nominees			Finalists		
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Male	56	65.1	+36.8	39	65.0	+36.6
Female	30	34.9	-33.4	21	35.0	-33.2
Total	86	100		60	100	

Age*San Francisco County—1970 Population
(Over 18)*

<u>Age</u>	<u>Number</u>	<u>Percent</u>
18 - 20	36,215	6.5
21 - 24	60,982	11.0
25 - 29	62,855	11.3
30 - 34	44,844	8.1
35 - 39	38,619	6.9
40 - 44	41,378	7.4
45 - 49	44,540	8.0
50 - 54	42,098	7.6
55 - 59	43,058	7.7
60 - 64	41,471	7.5
65 - 69	34,896	6.3
70 - 74	27,551	5.0
Over 75	37,291	6.7
Total	555,798	100.0
18 - 40	243,515	43.8
Over 40	312,283	56.2
Total	555,798	100.0
21 - 40	207,300	39.9
Over 40	312,283	60.1
Total	519,583	100.0

1970 Grand Jury

	<u>All Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
18 - 20	Not yet eligible for jury duty					
21 - 24	0	0	0	0	0	0
25 - 29	2	1.7	2	6.7	0	0
30 - 34	3	2.6	1	3.3	1	5.3
35 - 39	7	6.0	2	6.7	0	0
40 - 44	9	7.7	1	3.3	1	5.3
45 - 49	23	19.7	4	13.3	3	15.8
50 - 54	23	19.7	4	13.3	3	15.8
55 - 59	25	21.4	7	23.3	5	26.3
60 - 64	14	12.0	6	20.0	3	15.8
65 - 69	8	6.8	2	6.7	2	10.5
70 - 74	2	1.7	1	3.3	1	5.3
Over 75	1	0.9				
Total	117	100.2	30	99.9	19	100.1

	<u>All Nominees</u>			<u>Finalists</u>			<u>Grand Jurors</u>		
	<u>#</u>	<u>%</u>	<u>Rate of Error</u>	<u>#</u>	<u>%</u>	<u>Rate of Error</u>	<u>#</u>	<u>%</u>	<u>Rate of Error</u>
21 - 40	12	10.3	-74.2	5	16.7	-58.1	1	5.3	-86.7
Over 40	105	89.7	+49.3	25	83.3	+38.6	18	94.7	+57.6
Total	117	100.0		30	100.0		19	100.0	

1971 Grand Jury

	All Nominees		Finalists		Grand Jurors	
	#	%	#	%	#	%
18 - 20	Not yet eligible for jury duty					
21 - 24	0	0	0	0	0	0
25 - 29	0	0	0	0	0	0
30 - 34	2	1.6	1	3.3	1	5.3
35 - 39	3	2.4	0	0	0	0
40 - 44	10	8.1	4	13.3	3	15.8
45 - 49	25	20.2	5	16.7	4	21.1
50 - 54	25	20.2	6	20.0	4	21.1
55 - 59	24	19.3	5	16.7	2	10.5
60 - 64	12	9.7	5	16.7	3	15.8
65 - 69	13	10.5	2	6.7	1	5.3
70 - 74	7	5.6	0	0	0	0
Over 75	3	2.4	2	6.7	1	5.3
Total	124	100.1	30	100.1	19	100.2

	All Nominees			Finalists			Grand Jurors		
	#	%	Rate of Error	#	%	Rate of Error	#	%	Rate of Error
21 - 40	5	4.0	-90.0	1	3.3	-91.7	1	5.3	-86.7
Over 40	119	96.0	+59.7	29	96.7	+60.9	18	94.7	+57.6
Total	124	100.0		30	100.0		19	100.0	

1972 Grand Jury

	All Nominees		Finalists		Grand Jurors	
	#	%	#	%	#	%
18 - 20	Not yet eligible for jury duty					
21 - 24	1	0.8	0	0	0	0
25 - 29	4	3.1	0	0	0	0
30 - 34	3	2.3	0	0	0	0
35 - 39	7	5.5	0	0	0	0
40 - 44	12	9.4	2	6.7	2	10.5
45 - 49	24	18.8	6	20.0	2	10.5
50 - 54	30	23.4	11	36.7	8	42.1
55 - 59	20	15.6	5	16.7	4	21.1
60 - 64	12	9.4	0	0.0	0	0
65 - 69	10	7.8	2	6.7	0	0
70 - 74	3	3.9	4	13.3	3	15.8
Over 75	0	0	0	0	0	0
Total	128	100.0	30	100.1	19	100.0

	All Nominees			Finalists			Grand Jurors		
	#	%	Rate of Error	#	%	Rate of Error	#	%	Rate of Error
21 - 40	15	11.7	-70.7	0	0.0	-100	0	0.0	-100
Over 40	113	88.3	+46.9	30	100.0	+66.4	19	100.0	+66.4
Total	128	100.0		30	100.0		19	100.0	

1973 Grand Jury

	All Nominees		Finalists		Grand Jurors	
	#	%	#	%	#	%
18 - 20	0	0	0	0	0	0
21 - 24	1	0.9	1	3.3	0	0
25 - 29	4	3.4	0	0	0	0

30 - 34	6	5.2	2	6.7	2	10.5
35 - 39	8	6.9	3	10.0	1	5.3
40 - 44	7	6.0	2	6.7	1	5.3
45 - 49	17	14.7	4	13.3	3	15.8
50 - 54	22	19.0	5	16.7	3	15.8
55 - 59	18	15.5	5	16.7	4	21.1
60 - 64	25	21.6	6	20.0	3	15.8
65 - 69	6	5.2	2	6.7	2	10.5
70 - 74	1	0.9	0	0	0	0
Over 75	1	0.9	0	0	0	0
Total	116	100.2	30	100.1	19	100.1

	All Nominees			Finalists			Grand Jurors		
	#	%	Rate of Error	#	%	Rate of Error	#	%	Rate of Error
21 - 40	19	16.4	-62.6	6	20.0	-54.3	3	15.8	-63.9
Over 40	97	83.6	+48.8	24	80.0	+42.3	16	84.2	+49.8
Total	116	100.0		30	100.0		19	100.0	

1974-75 Grand Jury

	All Nominees		Finalists		Grand Jurors	
	#	%	#	%	#	%
18 - 20	1	1.0	0	0	0	0
21 - 24	1	1.0	0	0	0	0
25 - 29	2	2.0	0	0	0	0
30 - 34	7	6.9	1	7.1	1	10.0
35 - 39	4	4.0	0	0	0	0
40 - 44	10	9.9	2	14.3	1	10.0
45 - 49	17	16.8	4	28.6	3	30.0
50 - 54	24	23.8	3	21.4	3	30.0
55 - 59	14	13.9	0	0	0	0
60 - 64	11	10.9	0	0	0	0
65 - 69	6	5.9	2	14.3	1	10.0
70 - 74	4	4.0	2	14.3	1	10.0
Over 75	0	0	0	0	0	0
Total	101	100.2	14	100.0	10	100.0

	All Nominees			Finalists			Grand Jurors		
	#	%	Rate of Error	#	%	Rate of Error	#	%	Rate of Error
21 - 40	15	14.9	-66.0	1	7.1	-83.8	1	10.0	-77.2
Over 40	86	85.1	+51.4	13	92.9	+65.7	9	90.0	+60.1
Total	101	100.0		14	100.0		10	100.0	

1974-75 Grand Jury

Nominees and Volunteers

Age	Finalists		Grand Jurors	
	#	%	#	%
18 - 20	1	[2.5]	0	0
21 - 24	1	[2.5]	0	0
25 - 29	1	[2.5]	1	5.3
30 - 34	3	[7.5]	2	10.5
35 - 39	3	[7.5]	0	0
40 - 44	3	[7.5]	2	10.5
45 - 49	8	[20.0]	5	26.3
50 - 54	4	[10.0]	4	21.1

55 - 59	2	[5.0]	1	5.3
60 - 64	4	[10.0]	1	5.3
65 - 69	7	[17.5]	2	10.5
70 - 74	3	[7.5]	1	5.3
Over 75	0	[0]	0	0
Total	40	[100.0]	19	100.1

	Finalists			Grand Jurors		
	#	%	Rate of Error	#	%	Rate of Error
18 - 40	9	22.5	-48.6	3	15.8	-63.9
Over 40	31	77.5	+37.9	16	84.2	+49.8
Total	40	100.0		19	100.0	

1975-76 Grand Jury

Age	Nominees		Finalists	
	#	%	#	%
18 - 20	0	0	0	0
21 - 24	2	2.3	0	0
25 - 29	4	4.7	3	5.0
30 - 34	7	8.1	5	8.3
35 - 39	6	7.0	4	6.7
40 - 44	4	4.7	3	5.0
45 - 49	14	16.3	11	18.3
50 - 54	17	19.8	9	15.0
55 - 59	6	7.8	6	10.0
60 - 64	11	12.8	8	13.3
65 - 69	8	9.3	7	11.7
70 - 74	5	5.8	4	6.7
Over 75	1	1.2	0	0
Total	86	99.0	60	100.0

	Nominees			Finalists		
	#	%	Rate of Error	#	%	Rate of Error
18 - 40	19	22.1	-49.5	12	20.0	-54.3
Over 40	67	77.9	+38.6	48	80.0	+42.3
Total	86	100.0		60	100.0	

Occupation

Note: The categories used herein follow the definitions of the U.S. Census Bureau.

San Francisco County—1970 Census

	Number	Percent
White Collar	196,043	61.6
Blue Collar	122,268	38.4
Total	318,311	100

1970 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Number	Percent	Number	Percent
White Collar	92	78.6	22	73.3	17	89.5
Blue Collar	4	3.4	2	6.7	1	5.3
Student	0	0	0	0	0	0
Unemployed	0	0	0	0	0	0
Housewife/White Collar	11	9.4	4	13.3	0	0
Housewife/Blue Collar	1	0.9	0	0	0	0
Housewife/Unknown	1	0.5	1	3.3	0	0
Retired/White Collar	8	6.8	1	3.3	1	5.3
Retired/Blue Collar	0	0	0	0	0	0
Total	96	100	30	99.9	19	100

Of Those Employed:

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
White Collar	92	95.8	+55.5	17	94.4	+53.2
Blue Collar	4	4.2	-89.1	1	5.6	-85.4
Total	96	100		18	100	

1971 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Number	Percent	Number	Percent
White Collar	98	79.0	25	83.3	17	89.5
Blue Collar	4	3.2	0	0	0	0
Student	0	0	0	0	0	0
Unemployed	0	0	0	0	0	0
Housewife/White Collar	9	7.3	1	3.3	0	0
Housewife/Blue Collar	0	0	0	0	0	0
Housewife/Unknown	2	1.6	1	3.3	0	0
Retired/White Collar	10	8.1	3	10.0	1	5.3
Retired/Blue Collar	1	0.8	0	0	1	5.3
Total	124	100	30	99.9	19	100.1

Of Those Employed:

	Nominees		Finalists		Number	Grand Jurors	
	Number	Percent	Number	Percent		Percent	Rate of Error
White Collar	98	96.1	25	100	17	100	+62.3
Blue Collar	4	3.9	0	0	0	0	-100
Total	102	100	25	100	17	100	

1972 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Number	Percent	Number	Percent
White Collar	104	81.3	25	83.3	17	89.5
Blue Collar	4	3.1	1	3.3	1	5.3
Student	1	0.8	0	0	0	0
Unemployed	2	1.6	0	0	0	0
Housewife/White Collar	11	8.6	2	6.7	1	5.3
Housewife/Blue Collar	0	0	0	0	0	0
Housewife/Unknown	0	0	0	0	0	0
Retired/White Collar	6	4.7	2	6.7	0	0
Retired/Blue Collar	0	0	0	0	0	0
Total	128	100.1	30	100	19	100.1

Of Those Employed:

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
White Collar	104	96.3	+56.3	25	96.2	+56.2
Blue Collar	4	3.7	-90.4	1	3.8	-90.1
Total	108	100		26	100	

1973 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
White Collar	94	81.0		16	84.2	
Blue Collar	6	5.2		0	0	
Student	2	1.7		0	0	
Unemployed	0	0		0	0	
Housewife/White Collar	11	9.5		2	10.5	
Housewife/Blue Collar	0	0		0	0	
Housewife/Unknown	0	0		0	0	
Retired/White Collar	3	2.6		1	5.3	
Retired/Blue Collar	0	0		0	0	
Total	116	100		19	100	

Of Those Employed:

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
White Collar	94	94.0	+52.6	16	100	+62.3
Blue Collar	6	6.0	-84.4	0	0	-100
Total	100	100		16	100	

1974-75 Grand Jury—Nominees Only

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Number	Percent	Number	Percent
White Collar	80	79.2	11	78.6	9	90.0
Blue Collar	2	2.0	0	0	0	0
Student	1	1.0	0	0	0	0
Unemployed	0	0	0	0	0	0
Housewife/White Collar	7	6.9	0	0	0	0
Housewife/Blue Collar	1	1.0	0	0	0	0
Housewife/Unknown	1	1.0	0	0	0	0
Retired/White Collar	8	7.9	2	14.3	0	0
Retired/Blue Collar	1	1.0	1	7.1	1	10.0
Total	101	100	14	100	10	100

Of Those Employed:

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Number	Percent	Number	Rate of Error
White Collar	80	97.6	11	100	9	+62.3
Blue Collar	2	2.4	0	0	0	-100
Total	82	100	11	100	9	+62.3 -100

1974-75 Grand Jury—Nominees & Volunteers

	Finalists		Grand Jurors	
	Number	Percent	Number	Percent
White Collar	23	57.5	15	78.9
Blue Collar	2	5.0	1	5.3
Student	1	2.5	0	0
Unemployed	0	0	0	0
Housewife/White Collar	1	2.5	0	0
Housewife/Blue Collar	0	0	0	0
Housewife/Unknown	2	5.0	0	0
Retired/White Collar	10	25.0	2	10.5
Retired/Blue Collar	1	2.5	1	5.3
Total	40	100	19	100

Of Those Employed:

	Finalists		Rate of Error	Grand Jurors		Rate of Error
	Number	Percent		Number	Percent	
White Collar	23	92.0	+49.4	15	93.8	+52.3
Blue Collar	2	8.0	-79.2	1	6.3	-83.6
Total	25	100		16	100.1	

1975-76 Grand Jury

	Nominees		Rate of Error	Finalists		Rate of Error
	Number	Percent		Number	Percent	
White Collar	53	[61.6]		38	[63.3]	
Blue Collar	1	[1.2]		1	[1.7]	
Student	2	[2.3]		2	[3.3]	
Unemployed	0	[0]		0	[0]	
Housewife/White Collar	9	[10.5]		5	[8.3]	
Housewife/Blue Collar	1	[1.2]		0	[0]	
Housewife/Unknown	1	[1.2]		0	[0]	
Retired/White Collar	17	[19.8]		12	[20.0]	
Retired/Blue Collar	2	[2.3]		1	[3.3]	
Total	86	[100.1]		60	[99.9]	

Of Those Employed:

	Nominees		Rate of Error	Finalists		Rate of Error
	Number	Percent		Number	Percent	
White Collar	53	98.1	+59.3	38	97.4	+58.1
Blue Collar	1	1.9	-95.1	1	2.6	-93.2
Total	54	100		39	100	

Poverty Areas

The five poverty areas that have been used to illustrate discrimination against the poor have been picked by examining economic indicators in the 1970 census material on San Francisco. The areas that have been selected as poverty areas are marked by rental units with a value of less than \$125 a month, housing units valued at less than \$25,000 each, and median family incomes of less than \$10,000 a year, usually substantially less. These areas contain high percentages of non-White residents.

The specific census tracts covered by these poverty areas are as follows:

Central City: Census Tracts 110-11, 120-25, 176, 178-80, 226-27, and 607.

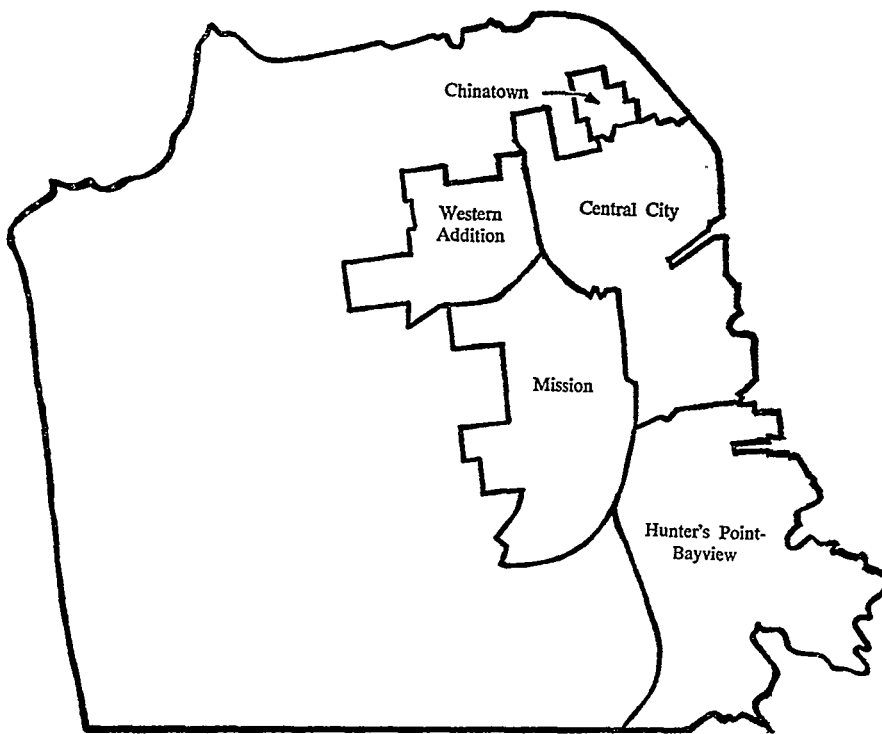
Chinatown: Census Tracts 106-07, 113-15, and 118.

Hunters Point-Bayview: Census Tracts 230-34, 606, and 608-10.

Mission: Census Tracts 169, 177, 201-03, 207-10, 214-15, 228-29 and 251-54.

Western Addition: Census Tracts 151, 153, 155, and 158-68.

The attached map indicates the boundaries of these zones.



San Francisco's Poverty Areas

*Poverty Areas—1970 Census
(Over 18 Population)*

	<u>Number</u>	<u>Percent</u>
Central City	55,566	10.0
Chinatown	16,262	2.9
Hunters Point-Bayview	17,972	3.2
Mission	66,814	12.0
Western Addition	42,484	7.6
Remainder of City	356,700	64.2
Total	<u>555,798</u>	<u>99.2</u>
Total for all Poverty Areas	199,098	35.8

1970 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Central City	1	0.9	—	0	0	—
Chinatown	0	0	—	0	0	—
Hunter's Point— Bayview	1	0.9	—	0	0	—
Mission	4	3.4	—	0	0	—
Western Addition	3	2.6	—	0	0	—
Remainder of City	108	92.3	+43.8	19	100	+55.8
Total	117	100	—	19	100	—
All Poverty Areas	9	7.7	-78.5	0	0	-100

1971 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Central City	3	2.4	—	1	5.3	—
Chinatown	1	0.8	—	0	0	—
Hunter's Point— Bayview	1	0.8	—	0	0	—
Mission	4	3.2	—	0	0	—
Western Addition	4	3.2	—	1	5.3	—
Remainder of City	111	89.5	+39.4	17	89.5	+39.4
Total	124	99.9	—	19	100.1	—
All Poverty Areas	13	10.5	-70.7	2	10.5	-70.7

1972 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Central City	5	3.9	—	0	0	—
Chinatown	2	1.6	—	0	0	—
Hunter's Point— Bayview	4	3.1	—	1	5.3	—
Mission	4	3.1	—	0	0	—
Western Addition	1	0.8	—	0	0	—
Remainder of City	112	87.5	+36.3	18	94.7	+47.5
Total	120	100	—	19	100	—

1973 Grand Jury

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Central City	2	1.7	—	0	0	—
Chinatown	4	3.4	—	0	0	—
Hunter's Point— Bayview	1	0.9	—	1	5.3	—
Mission	5	4.3	—	1	5.3	—
Western Addition	3	2.6	—	0	0	—
Remainder of City	101	87.1	+35.7	17	89.5	+39.4
Total	116	100	—64.0	19	100.1	—70.7
All Poverty Areas	15	12.9	—	2	10.5	—

1974-75 Grand Jury—Volunteers & Nominees

	Finalists		Grand Jurors	
	Number	Rate of Error	Number	Rate of Error
Central City	2	5.0	0	—
Chinatown	1	2.5	1	—
Hunter's Point—Bayview	2	5.0	1	—
Mission	5	12.5	2	—
Western Addition	1	2.5	0	—
Remainder of City	29	72.5	15	+22.9
Total	40	100.0	19	—41.1
All Poverty Areas	11	27.5	4	—

1974-75 Grand Jury—Nominees Only

	Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error	Number	Percent	Rate of Error
Central City	0	0	—	0	0	—
Chinatown	1	1.0	—	1	10.0	—
Hunter's Point— Bayview	0	0	—	0	0	—
Mission	4	4.0	—	1	10.0	—
Western Addition	4	4.0	—	0	0	—
Remainder of City	92	91.1	+41.9	8	80.0	+24.6
Total	101	100.1	—75.1	10	100.0	—44.1
All Poverty Areas	9	8.9	—	2	20.0	—

Race

*San Francisco County—1970 Census
(Adjusted) (Over 18 Population)*

<u>White</u>	<u>Number</u>	<u>Percent</u>
Anglo-European	359,284	61.2
Hispanic Origin	85,442	14.6
<u>Black</u>	64,993	11.1
<u>Asian</u>	77,026	13.1
Total Non-White*	227,461	38.8

Note: These racial figures have been computed through the following method: The 1970 census figures as originally published indicated that Whites of Anglo-European descent numbered 352,585, persons of Hispanic origin numbered 67,277, Blacks numbered 60,346, and Asians numbered 75,590. Subsequently the Census Bureau announced that it had undercounted Blacks nationally by 7.7 percent and Whites by 1.9 percent. The figures for Blacks and Whites have thus been adjusted by these percentages. More recently, the Census Bureau announced that it had undercounted persons of Hispanic origin in California by 27 percent; Hispanic figures have thus been increased by this amount. The Asian population has been increased by 1.9 percent, on the theory that this group must have been undercounted by at least the same percent as the Whites; almost certainly the undercount is greater, but no official announcement has yet been made to plaintiffs' knowledge.

* The term "Total Non-White" includes Whites of Hispanic origin.

1970 Grand Jury

	Nominees		Finalists		Grand Jurors		Rate of Error
	Number	Percent	Number	Percent	Number	Percent	
White	55	47.0	24	80.0	18	94.7	+54.7
Anglo-European	4	3.4	0	0	0	0	—
Hispanic Origin	9	7.7	0	0	0	0	—
Black	8	6.8	1	3.3	1	5.3	—
Asian	41	35.0	5	16.7	0	0	—
Unknown	117	99.9	30	100.0	19	100.0	—
Total					1	5.3	-86.3
Total Non-White							

Note: The figures for persons of Hispanic origin and for Asians are thought to be complete, because these persons are normally readily identifiable by their surnames, and this form of identification is a standard method used by the Census Bureau. Plaintiffs thus assume that all of the unknown are either Whites of Anglo-European origin or Blacks.

1971 Grand Jury

	Nominees		Finalists		Grand Jurors		Rate of Error
	Number	Percent	Number	Percent	Number	Percent	
White	44	35.5	16	53.3	12	63.2	+3.3
Anglo-European	8	6.5	1	3.3	1	5.3	—
Hispanic Origin	11	8.9	4	13.3	3	15.8	—
Black	12	9.7	4	13.3	3	15.8	—
Asian	49	39.5	5	16.7	0	0	—
Unknown	124	100.1	30	99.9	19	100	—
Total					7	36.8	-5.2
Total Non-White							

1972 Grand Jury

	Nominees		Finalists		Rate of Error	Number	Grand Jurors		Rate of Error
	Number	Percent	Number	Percent			Percent	Rate of Error	
White	63	50.8	21	70.0	+14.4	14	73.7	+20.4	
Anglo-European	7	5.6	0	0	—	0	0	—	
Hispanic-Origin	15	12.1	6	20.0	—	3	15.8	—	
Black	13	10.5	3	10.0	—	2	10.5	—	
Asian	26	21.0	0	0	—	0	0	—	
Unknown	—	—	—	—	—	—	—	—	
Total	124	100.0	30	100.0	-22.7	19	100.0	-32.2	
Total Non-White	—	—	9	30.0	—	5	26.3	—	

1973 Grand Jury

	Nominees		Finalists		Rate of Error	Number	Grand Jurors		Rate of Error
	Number	Percent	Number	Percent			Percent	Rate of Error	
White	54	46.6	22	73.3	+19.8	14	73.7	+20.4	
Anglo-European	8	6.9	2	6.7	—	2	10.5	—	
Hispanic Origin	15	12.9	5	16.7	—	3	15.8	—	
Black	14	12.1	1	3.3	—	0	0	—	
Asian	25	21.6	0	0	—	0	0	—	
Unknown	—	—	—	—	—	—	—	—	
Total	116	100.1	30	100.0	-31.2	19	100.0	-32.2	
Total Non-White	—	—	8	26.7	—	5	26.3	—	

1974-75 Grand Jury—Nominees Only

	Nominees		Finalists		Percent	Number	Grand Jurors		Rate of Error
	Number	Percent	Number	Percent			Percent	Rate of Error	
White	37	[36.6]	12	85.7		9	90.0	+47.1	
Anglo-European	7	[6.9]	0	0		0	0	—	
Hispanic Origin	7	[6.9]	0	0		0	0	—	
Black	6	[5.9]	1	7.1		1	10.0	—	
Asian	44	[43.6]	1	7.1		0	0	—	
Unknown	—	—	—	—		—	—	—	
Total	101	[99.9]	14	99.9		10	100.0	-74.2	
Total Non-White	—	—	—	—		1	10.0	—	

1974-75 Grand Jury—Nominees & Volunteers

	<u>Finalists</u>		<u>Grand Jurors</u>		
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Rate of Error</u>
White					
Anglo-European	31	77.5	16	84.2	+37.6
Hispanic Origin	2	5.0	0	0	—
Black	2	5.0	1	5.3	—
Asian	2	5.0	2*	10.5	—
Unknown	5	12.5	0	0	—
Total	40	100.0	19	100.0	
Total Non-White			3*	15.8	—59.3

* One of the two Asians on the 1974-75 grand jury resigned early in the grand jury's term and was replaced by a White of Anglo-European descent.

1975-76 Grand Jury

	<u>Nominees</u>		<u>Finalists</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
White				
Anglo-European	42	48.8	39	65.0
Hispanic Origin	5	5.8	3	5.0
Black	8	9.3	8	13.3
Asian	5	5.8	3	5.0
Unknown	26	30.2	7	11.7
Total	86	99.9	60	100.0

Income*1970 Grand Jury*

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Over \$11,000	51	43.6	14	46.7	12	63.2
Under \$11,000	4	3.4	0	0	0	0
Unknown	62	53.0	16	53.3	7	36.8
Total	177	100.0	30	100.0	19	100.0

1971 Grand Jury

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Over \$11,000	51	41.1	18	60.0	11	57.9
Under \$11,000	5	4.0	0	0	0	0
Unknown	68	54.8	12	40.0	8	42.1
Total	124	99.9	30	100.0	19	100.0

1972 Grand Jury

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Over \$11,000	69	53.9	16	53.3	9	47.4
Under \$11,000	8	6.3	2	6.7	1	5.3
Unknown	51	39.8	12	40.0	9	47.4
Total	128	100.0	30	100.0	19	100.1

1973 Grand Jury

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Over \$11,000	60	52.7	14	46.7	8	42.1
Under \$11,000	9	7.8	2	6.7	1	5.3
Unknown	47	40.5	14	46.7	10	52.6
Total	116	100.0	30	100.1	19	100.0

1974-75 Grand Jury—Nominees Only

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Over \$11,000	30	29.7	1	7.1	1	10.0
Under \$11,000	5	5.0	2	14.3	1	10.0
Unknown	66	65.3	11	78.6	8	80.0
Total	101	100.0	14	100.0	10	100.0

1975-76 Grand Jury

	<u>Nominees</u>		<u>Finalists</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Over \$11,000	11	12.8	9	15.0
Under \$11,000	1	1.2	1	1.7
Unknown	74	86.0	50	83.3
Total	86	100.0	60	100.0

Note: The median family income in San Francisco in 1970 was \$10,503. Plaintiffs have attempted to obtain information about the income level of grand jurors, but these figures are the most incomplete of all. The figures that are available are offered above.

Appendix B
Previous Positions in Government of City and County
of San Francisco

	no longer on bench	Board of Supervisors	City Attorney	District Attorney	Housing Authority	Public Defender	Acting Mayor	Board of Education	U.S. Attorney	U.S. Com- missioner	Cal. Att'y Gen. Office
Allen			X								
Arata	X										
Arnold	X	X									
Benson											
Brown											
Calcagno											
Campilongo											
Carpenti	X			X							
Colvin											
Constine									X	X	
Cragen											
Dandurand											
Drewes									X		
Ertola		X									
Glickfield	X										
Horn	X		X								
Karesh									X		
Kennedy						X					
Lazarus	X							X			
Low											X
Lynch											
Mana			X								
Mayer				X							
McCarty		X									
Merrill				X							
Mullins			X	X							
Peery				X							
Perasso						X					
Pfotenhauer											
Rolph		X					X				
Shaw				X							
Vavauris					X						

[Social and Political Affiliations]

	no longer on bench	Bohemian Club	Social Register	Olympic Club	Commonwealth Club	Knights of Columbus	American Legion	Elks	Masons	Naive Sons of the Golden West	Past Officer in Political Party
Allen							X		X		
Arata	X			X	X	X					Rep.
Arnold	X										
Benson					X						
Brown											
Calcagno							X				
Campilongo											
Carpenti	X			X	X	X		X		X	
Colvin											
Constine									X		
Cragen											
Dandurand											
Drewes		X	X								
Ertola							X		X		Dem.
Glickfield	X						X		X		Dem.
Horn	X								X		Rep.
Karesh											
Kennedy											
Lazarus	X				X				X	X	
Low											
Lynch											
Mana						X	X				
Mayer											
McCarty										X	
Merrill				X	X		X		X		
Mullins											
Peery				X				X	X		
Perasso											
Pfotenhauer											
Rolph			X				X				
Shaw							X				
Vavauris							X				

All information for Appendix B was obtained from CALIFORNIA COURTS AND JUDGES HANDBOOK (2d ed. 1973 & Supp. 1975) and from Chaikin, Coutin, Dressler & Goldman, "Study of the Superior Court of San Francisco" (1972) (a paper based on questionnaires and personal interviews, on file at Public Advocates).

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

INDIANA QUADRA, et al.,

Plaintiffs

No. C-72-1689 CBR

vs.

SUPERIOR COURT OF THE
CITY AND COUNTY OF SAN
FRANCISCO et al.,

Defendants

MEMORANDUM OF POINTS
AND AUTHORITIES IN AN-
SWER TO DEFENDANTS' MO-
TION FOR PARTIAL SUM-
MARY JUDGMENT

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STATEMENT OF FACTS

Since the time of filing of Plaintiffs' Motion for Summary Judgment, Presiding Judge Robert J. Drewes has completed the selection of the "civil" or "investigative" grand jury for 1975-76. On August 14, 1975, the last five of the sixty persons examined by the presiding

judge were summoned to court and after they were asked a few standard questions about their backgrounds and possible conflicts of interests, Judge Drewes announced his selections.¹⁰⁴ As defendants intended (and publicly announced),¹⁰⁵ the new grand jury is a true blue ribbon panel. The group of nineteen includes three former members of the San Francisco Board of Supervisors (Roger Boas, Harold Dobbs, and Clarissa McMahon), a former president of the San Francisco Board of Education (Alan H. Nichols), a person with long experience with the San Francisco Community College District (Lloyd D. Luckmann), and a retired lieutenant in the San Francisco Police Department (Alan A. Rosenbaum). The grand jury contains *not one blue collar worker* but does have five attorneys and two accountants. One of the attorneys (Richard Sims III) has been counsel to Sheriff Richard Hongisto and is currently active in organizing the campaign of Joe Freitas, a candidate attempting to oust incumbent John J. Ferdon, the city's district attorney. Harold Dobbs has unsuccessfully run for mayor in several recent elections.¹⁰⁶

Fifteen of the nineteen grand jurors are men, only four are women. Women are thus under-represented by 59.7 percent (or have only two-fifths the number of grand jurors their percentage of the San Francisco population demands).¹⁰⁷ Fourteen of the grand jurors are Whites of Anglo-European descent, two are Black, two are Chinese, and one is of Hispanic origin. Non-Whites are thus under-represented by 32.2 percent (or, put another way, have about one-third *fewer* persons on the grand jury than they should have). None of the grand jurors are under the age of twenty-seven, and although seven are under forty (the highest number in recent years) this group is still under-represented and should have eight or nine members. Ten of the grand jurors are over fifty, giving that demographic group about 50 percent

104. The presiding judge did not explain the reasons why he excused the 41 unacceptable nominees, except in two or three cases of ill health or physical absence. [Notes of Douglas P. Elliott, dated Aug. 14, 1975 (on file in Professor Van Dyke's office).]

105. [See Certificate with Transcript of Deposition in Support of Motion for Summary Judgment of Aug. 12, 1975, *Quadra v. Superior Ct.*, Civil No. C-72-1689 (filed Sept. 20, 1972).]

106. This information about the grand jurors was gathered by personal observation and by examination of standard reference books such as *Martindale-Hubbell Law Directory* and *Who's Who in the West*. See Affidavit of Jon Van Dyke in Plaintiffs' Motion for Summary Judgment; Affidavit of Douglas P. Elliott, attached to this Reply Brief. For a full description of the 1975-76 grand jurors, see Appendix A.

107. For a full listing of the demographic breakdown of the 1975-76 grand jury, see Appendix B.

greater representation than its percentage of the population would warrant.

The 1975-76 Grand Jury does not come from all parts of San Francisco, but instead is heavily concentrated in the affluent areas of town. Only three are located in the city's poverty areas,¹⁰⁸ and these three are located in what must be the most affluent sections of the poverty areas; two live near Polk Street in the valley below Nob Hill and Alan Nichols lives in North Beach just north of Chinatown. These locations are included in the "poverty areas" only because the census tracts used to determine those poverty areas sometimes include both affluent and poor areas. *Not one* grand juror lives in Hunters Point-Bayview, the Mission, or the Western Addition. One lives a block from Coit Tower, one lives on top of Nob Hill, one lives on Russian Hill, four live in the Sunset district, and eight live in Pacific and Presidio Heights, where Judge Drewes also lives.

None of the grand jurors is in any sense poor, most are definitely affluent. And, in addition to neglecting the entire blue collar population of San Francisco (and excusing without reason the few nominees that had ties to the labor movement), the presiding judge seems to have emphasized certain special interests in his final selections. Persons with ties to the construction and development industries seem to dominate the present grand jury. Two grand jurors have formerly been employed by the Bechtel Corporation and a third is associated with the law firm of Thelen, Marrin, Johnson and Bridges, which represents Bechtel as well as other large construction companies. Another attorney is associated with the law firm of Jacobs, Sills, and Coblenz, and one of the women on the grand jury is married to an attorney also associated with that firm, which has as clients several of the area's largest construction and development corporations. Still another attorney, Alan H. Nichols, has as a client the Building Industry Conference Board of San Francisco, and in addition is legal counsel to the Eastshore Park Project Corporation of San Francisco, which has been asked by the board of supervisors to prepare a development program for the Port of San Francisco. The grand jury thus seems heavily biased in favor of further development in San Francisco, one of the controversial issues toward which the grand jury should assume an independent and impartial stance.

The 1975-76 San Francisco Grand Jury is thus a blue ribbon panel by any standard. Richard O. Herman, a life insurance salesman who

108. For the boundaries of the poverty areas, see Appendix A of Plaintiffs' Motion for Summary Judgment.

married one of Judge Drewes's close friends twenty-five years ago and had been nominated by Judge Drewes on five previous occasions (but was nominated by Judge Rolph this time) was named by Judge Drewes to be foreman. Seven of the nineteen grand jurors were nominated by either Judge Drewes or Judge Rolph, the only two of the twenty-six San Francisco Superior Court judges who can be found in the city's Social Register.

ARGUMENT

I. Introduction

The grand jury finally selected by the presiding judge accentuates the issue posed in this case—can a grand jury with the enormous power to scrutinize every operation of San Francisco's city and county government, the power to demand information from any one in the city, the power to issue reports on any subject whatsoever, and the power to bring impeachment proceedings against every public official in the city and county government be selected by means that would be unquestionably unconstitutional if the grand jury had the one additional power of filing criminal indictments? The presiding judge's personally selected grand jury contains many members who have been active in the city's political life and who may well be tempted to use their powerful position for partisan ends. They come almost exclusively from the upper economic strata of our diverse city and will undoubtedly dwell on the interests of the affluent rather than the problems of the poor. They are likely to ignore the problems of discrimination against women. They are unrepresentative of this heterogeneous city by any standard.

II. Defendants' Selection Method Unquestionably Violates Constitutional Standards.

Defendants have misinformed the court when they have asserted that this court is bound by *White v. State*,¹⁰⁹ because the United States Supreme Court dismissed the appeal in that case for want of a substantial federal question,¹¹⁰ and that "this constitutes an affirmance on the merits."¹¹¹

109. 230 Ga. 327, 196 S.E.2d 849 (1973). This case was subsequently overruled by *State v. Gould*, 232 Ga. 844, 209 S.E.2d 312 (1974).

110. 414 U.S. 886, *rehearing denied*, 414 U.S. 1086 (1973).

111. See Defendants' Memorandum in Support of Motion for Summary Judgment Aug. 12, 1975, at 8, *Quadra v. Superior Ct.*, Civil No. C-72-1689 (N.D. Cal., filed Sept. 20, 1972).

The current interpretation of such a dismissal has been summarized by Stanford Professor Paul Brest as follows:

The dismissal of an appeal for want of a substantial federal question is in theory an adjudication on the merits. But as the Court, faced with an increasing workload, has used this formula to dispose of appeals obviously presenting nontrivial federal questions, dismissal has come to be viewed as lying between an affirmance after full argument and a denial of certiorari.¹¹²

The correct standard by which to judge grand jury selection is as stated in this court's earlier opinion, that where the "opportunity to discriminate" is clear, as it certainly is under this selection process, it is proper to examine statistics to see whether a prima facie case of discrimination has been established. And if those statistics indicate a substantial under-representation over a period of time, then the burden shifts to the government to explain that under-representation.¹¹³ The defendants have not been able to justify satisfactorily the discrimination in this case, nor can they, because they have conceded that members of under-represented groups would be just as competent to serve as grand jurors as those now selected to serve.¹¹⁴

In fact, this case truly presents a situation in which an "intent to discriminate" exists, because the presiding judge set out to impanel a grand jury with superior educational qualifications and with experience in the city and county government¹¹⁵ and because of past discrimination that inevitably means a grand jury that is dominated by affluent White males. The requirement of experience means the grand jury will underrepresent the young. "An educational qualification in a particular historical, social context, may not be neutral."¹¹⁶ In the context of a city as diverse as San Francisco, the presiding judge's high qualifications are certainly not neutral, but exclude large numbers of the city's population.

III. Because the "Civil" or "Investigative" Grand Jury Consists so Predominantly of Older Affluent White

112. P. BREST, PROCESSES OF CONSTITUTIONAL DECISIONMAKING 78-79 (1975), *citing* Serrano v. Priest, 5 Cal. 3d 584, 615-17, 487 P.2d 1241, 1263-64, 96 Cal. Rptr. 601, 623-24 (1971); R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 193-202 (4th ed. 1969); Currie, *The Three-Judge District Court in Constitutional Litigation*, 32 U. CHI. L. REV. 1, 74 n.365 (1964).

113. See *Quadra v. Superior Ct.*, 378 F. Supp. 605, 613-15 (N.D. Cal. 1974).

114. See Judge Drewes's deposition, *supra* note 13, at 32, 37.

115. *Id.* at 21-22.

116. *Quadra v. Superior Ct.*, 378 F. Supp. 605, 616 n.14 (N.D. Cal. 1974).

Males, They Are Unlikely To Investigate the Concerns of the Young, the Poor, Non-Whites, and Women.

It is unrealistic to expect a group of persons who come so predominantly from one economic and social stratum to be concerned broadly about every problem that the citizens of San Francisco face. Persons are naturally alert to problems they personally experience, and only if a grand jury contains persons from a diverse mix of the geographical, social, racial, and ethnic groups in this city, containing representative numbers from the two sexes and the various age groupings, can we be sure that the grand jury will evenhandedly concern itself with all the problems of San Francisco.

Older males are unlikely to investigate sexual discrimination in hiring. If, for instance, the City Attorney's Office had a disproportionate number of male attorneys, the 1975-76 grand jury would not be likely to examine the causes of such a phenomenon. Without representation from those who have recently graduated from the high schools and higher educational institutions of San Francisco, the grand jury is unlikely to examine student complaints at those institutions.

Poor people are familiar with city departments that this grand jury knows nothing about—the Social Services Department, for instance, which administers the Aid to Families with Dependent Children program, the Food Stamps program, General Assistance, Medi-Cal, and other programs designed to aid the poor, but often inadequately staffed. This grand jury is unlikely to examine the Redevelopment Agency, which has often been accused of insensitivity toward the poorer residents of San Francisco.

A grand jury that is almost 80 percent male is unlikely to investigate the adequacy of the pap smears administered by the city's Health Department, a cause of much concern to the women who are obliged to use that service. With a substantial underrepresentation of non-Whites on the grand jury, it is unlikely that this body will devote extensive time to the problem of police-community relations that is a major concern of non-Whites and those who live in the less affluent sectors of the city. Non-Whites and those in poorer neighborhoods frequently feel that their neighborhoods are given less adequate service when it comes to fire-fighting, crime prevention, and the cleaning of streets and beautification of public areas. This type of discrimination is unlikely to be investigated if no persons from the poorest areas of the city are on the grand jury. Because such services are likely to vary from district

to district, impartial investigations will be conducted only if persons from all parts of town are on the grand jury and many different views are represented.

The rich will probably approach city problems with a strong concern about the saving of taxes. The poor are likely to be more concerned about the adequacy of city services. The list of examples of concerns left unrepresented on the 1975-76 grand jury could be continued endlessly. The simple and important point is that many diverse views must be adequately represented on a grand jury if it is to perform its historical role of serving as an impartial and independent watchdog over city agencies.

IV. As a Direct Result of the Unconstitutional Selection Process, the 1975-76 "Civil" or "Investigative" Grand Jury Is Filled with Persons Who Have Serious Past and Present Conflicts of Interests Because of Ties with Persons Holding Office. These Conflicts Deprive the Grand Jury of Its Independence and Impartiality and Deny to the Body the Legitimacy Needed for Its Investigations and Reports To Be Accepted as Legitimate and Fair. Instead the Grand Jury Has Been Transformed into an Overtly Political Body.

When the 1974-75 San Francisco Grand Jury recently issued its year-end reports, some of them sharply critical of high city officials, the officials attacked the grand jurors as incompetent and biased in their perspective.¹¹⁷ The grand jury has thus already been transformed to some extent into a partisan body, and that transformation is complete with the 1975-76 grand jury. Containing several prominent defeated politicians, others who have served the city in high office during earlier periods, and at least one young lawyer (Richard Sims III) active in a current campaign to defeat an incumbent (the district attorney), the grand jury will be attacked as politically motivated no matter what kind of a report it issues. How can Mr. Sims be expected to investigate impartially the District Attorney, whom he clearly thinks should be removed from office? How can Harold Dobbs investigate impartially Mayor Alioto, who has defeated Mr. Dobbs' recent attempts to become mayor himself?

In order to maintain the respect and legitimacy the grand jury has historically held, this body must be selected by means that insulate it

117. See notes 26, 28 & accompanying text *supra*.

from all possibility of political manipulation. It not only must be free from conflicts of interest, but also must be free from all appearance of such conflicts. A hand-picked group of persons selected because of their past activity and containing many prominent and politically active members of the community cannot be expected to view all allegations of corruption or inefficiency impartially. Many of these grand jurors admitted during their testimony that they knew many persons still in the city government.¹¹⁸ Many serious allegations of possible corruption have been raised by the 1974-75 grand jury. The incoming grand jury cannot be expected to investigate those allegations impartially. The grand jurors will be guided by their political views and their personal friendship with or enmity toward those persons attacked. The people of San Francisco will not be able to accept this grand jury's investigations as an impartial view of the matter.

CONCLUSION

This case in a sense presents a case of first impression because the defendants have created an institution that has never existed before, a "civil" or "investigative" grand jury that, according to the defendants' double standard, is permissible even though it is grossly unrepresentative of San Francisco's population. Such a proposition has never been accepted by any court and must not be accepted now.

Instead, defendants should be obliged to select grand jurors by the simple and inexpensive method that is used in the vast majority of jurisdictions throughout the United States—random selection from some neutral list such as the list of registered voters. Such a system would insure the independence and impartiality of the grand jury and give that body's investigations and reports the respect and legitimacy they must have if the grand jury is to be of service as the "people's watchdog" over government agencies.

FURTHER STATISTICS

[An affidavit by Jon Van Dyke which accompanied the following tables explained that the statistics were compiled from official data provided by defendants regarding age, sex, address, and occupation of the grand jurors and from personal observations by the affiant and by law students whom he supervised in sessions at which prospective 1975-76 grand jurors were questioned.]

118. See affidavit of Jon Van Dyke attached to Plaintiffs' Motion for Summary Judgment.

The Demographic Composition of the 1975-76 Grand Jury

Sex

	All Nominees		Finalists		Grand Jurors	
	Number	Percent	Rate of Error*	Number	Percent	Rate of Error
Male	56	65.1	+36.8	39	65.0	+36.6
Female	30	34.9	-33.4	21	35.0	-33.2
Total	86	100.0		60	100.0	
				15	78.9	+65.8
				4	21.1	-59.7
				19	100.0	

* [See the discussion of "rate of error" immediately preceding the first statistical tables *supra*. Plaintiffs explained the concept further, with reference to the table above, as follows:] Thus, in the first example . . ., the difference is computed between the male percentage among the nominees (65.1 percent) and the male percentage of the city (47.6 percent) for a result of 17.5. This figure is divided by 47.6 for the Rate of Error of 36.8 percent, which indicates that over a third as many men were nominated as should be the case if true representative patterns were used. The plus (+) sign indicates that the group is overrepresented; the minus (-) sign indicates underrepresentation.

Age

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
18 - 20	0	0	0	0	0	0
21 - 24	2	2.3	0	0	0	0
25 - 29	4	4.7	3	5.0	3	15.8
30 - 34	7	8.1	5	8.3	2	10.5
35 - 39	6	7.0	4	6.7	2	10.5
40 - 44	4	4.7	3	5.0	1	5.3
45 - 49	14	16.3	11	18.3	1	5.3
50 - 54	17	19.8	9	15.0	2	10.5
55 - 59	6	7.0	6	10.0	2	10.5
60 - 64	11	12.8	8	13.3	3	15.8
65 - 69	8	9.3	7	11.7	1	5.3
70 - 74	5	5.8	4	6.7	2	10.5
Over 75	1	1.2	0	0	0	0
Total	86	99.0	60	100.0	19	100.0

		<u>Rate of Error</u>		<u>Rate of Error</u>		<u>Rate of Error</u>
18 - 40	19	22.1	—49.5	12	20.0	—54.3
Over 40	67	77.9	+38.6	48	80.0	+42.3
Total	86	100.0		60	100.0	
					19	100.0

Occupation

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
White Collar	53	61.6	38	63.3	14	73.7
Blue Collar	1	1.2	1	1.7	0	0
Student	2	2.3	2	3.3	1	5.3
Unemployed	0	0	0	0	0	0
Housewife- White Collar	9	10.5	5	8.3	0	0
Housewife- Blue Collar	1	1.2	0	0	0	0
Housewife- Unknown	1	1.2	0	0	0	0
Retired- White Collar	18	20.9	13	21.7	4	21.1
Retired- Blue Collar	1	1.2	1	1.7	0	0
Total	86	100.1	60	100.0	19	100.1

Of Those Employed

		<u>Rate of Error</u>		<u>Rate of Error</u>		<u>Rate of Error</u>
White Collar	53	98.1	+59.3	38	97.4	+58.1
Blue Collar	1	1.9	—95.1	1	2.6	—93.2
Total	54	100.0		39	100.0	
					14	100.0

Poverty Areas

	<u>Nominees</u>			<u>Finalists</u>			<u>Grand Jurors</u>		
	<u>No.</u>	<u>Per- cent</u>	<u>Rate of Error</u>	<u>No.</u>	<u>Per- cent</u>	<u>Rate of Error</u>	<u>No.</u>	<u>Per- cent</u>	<u>Rate of Error</u>
Central City	4	4.7	—	3	5.0	—	2	10.5	—
Chinatown	2	2.3	—	2	3.3	—	1	5.3	—
Hunters Point— Bayview	1	1.2	—	1	1.7	—	0	0	—
Mission	1	1.2	—	1	1.7	—	0	0	—
Western Addition	5	5.8	—	4	6.7	—	0	0	—
Remainder of City	73	84.9	+32.2	49	81.7	+27.3	16	84.2	+31.2
Total	86	99.9		60	100.1		19	100.0	
All Poverty Areas	13	15.1	—57.8	11	18.3	—48.9	3	15.8	—55.9

Race

	<u>Nominees</u>		<u>Finalists</u>		<u>Grand Jurors</u>		<u>Rate of Error</u>
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	
Whites of Anglo-European Descent	44	51.2	41	68.3	14	73.7	+20.4
Hispanic Origin	6	7.0	4	6.7	1	5.3	—
Black	8	9.3	8	13.3	2	10.5	—
Asian	5	5.8	3	5.0	2	10.5	—
Unknown	23	26.7	4	6.7	0	0	—
Total	86	99.9	60	100.0	19	100.0	
Total Non-Whites					5	26.3	—32.2

[An affidavit by Douglas P. Elliott explained that the following biographical information about the persons selected for the 1975-76 San Francisco grand jury was obtained from the testimony of the grand jurors themselves and from standard reference books.]

Breyer, Charles R., 1444 Kearny Street (Telegraph Hill one block from Coit Tower), White, male, 33 years old, nominated by Judge Shaw. Formerly an assistant district attorney, and a member of the staff of Special Prosecutors Cox and Jaworski. Now associated with the law firm of Jacobs, Sills, and Coblenz, whose clients include several large construction and development corporations.

Bentson, Harold J., 2329 Laguna Street (Pacific Heights), White, male, 72 years old, nominated by Judge Rolph. Retired engineer, formerly employed by Bechtel Corporation.

Boas, Roger, 3329 Washington Street (Pacific Heights), White, male, 53 years old, nominated by Judge Drewes. President of Boas Pontiac. Producer-moderator of international news analysis, "World Press", weekly show on KQED. San Francisco Board of

Supervisors, 1961-73. Chairman Cal. Demo. Central Comm. 1968-71; Demo. nominee for 6th Cong. Dist. 1972 (defeated); Bd. of Directors, Park Presidio YMCA and World Affairs Council; No. Cal. Member of Olympic, Concordia-Argonaut Clubs.

Carr, Elizabeth A., 1426 -6th Avenue, (Inner Sunset), Black, female, 44 years old, nominated by Judge Cragen. High school teacher, South San Francisco.

Chin, Gordon, 1625 Larkin Street (near Polk Street), Chinese, male, 27 years old, nominated by Judge Low. Employment advocate, Chinese for Affirmative Action.

Dickinson, Maurice L., 810 Gonzalez Drive (Park Merced), White, male, 73 years old, nominated by Judge Rolph. Retired civil engineer, formerly a consultant for Bechtel and other groups; worked with Hetch Hetchy Project.

Dobbs, Harold S., 1000 Mason Street (Nob Hill), White, male, 56 years old, nominated by Judge Drewes. Attorney, Dobbs, Doyle and Nielsen, member, San Francisco Board of Supervisors, 1951-63; frequent unsuccessful candidate for mayor. Formerly owner of Mel's Drive-In. Member of Hastings Law School Board of Directors.

Fong, Katheryn M., (Pro Tem secretary): 1409 Sacramento (near Polk Street), Chinese, female, 29 years old, nominated by Judge Low. Graduate student, doing thesis on international relations. Former member of civil service task force, which was involved in affirmative action work and communication with minority groups.

Garrett, David, 2617 Divisadero Street (Pacific Heights), White, male, 39 years old, nominated by Judge Brown. Audit manager of Safeway Stores, earns between \$25,000 and \$50,000.

Herman, Richard O., (Foreman), 3461 Washington Street (Presidio Heights), White, male, 62 years old, nominated by Judge Rolph, but Judge Drewes nominated him in 1970, 1971, 1972, 1973, and 1974. An independent life insurance agent, earning between \$25,000 and \$50,000. He is the brother of CBS correspondent George Herman. He married a close friend of Judge Drewes 25 years ago.

Lemus, Jessie, 260 Corbett Avenue (Twin Peaks), Hispanic, male, 36 years old, nominated by Judge Brown. Grants Manager for Personnel, employed by U.S. Civil Service Comm.

Luckmann, Lloyd D., 3806 Clay Street (Presidio Heights), White, male, 65 years old, nominated by Judge Shaw. College Administrator, Lincoln University, formerly at the University of San Francisco. Worked for the Community College District from 1935-1968.

McMahon, Clarissa, 2201 Leavenworth (Russian Hill), White, female, 63 years old, nominated by Judge Rolph. Retired attorney, formerly associated with Richard C. Shortall (brother). Former member of board of supervisors, 1953-1966.

"The Scam What Am: One appointee to the new civil grand jury—the so-called "watchdog over all city agencies"—is causing heads to swivel. That would be the redoubtable Clarissa McMahon, who resigned in a great hurry from the Bd. of Supes in '66 after a rash of bad publicity about a real estate deal and the high price of fire hydrants sold to the city by her then close pal and client, Stuart Greenberg. Purely coincidental, of course. "Must devote more time to my law practice," she said" *Herb Caen*, San Francisco Chronicle, Aug. 20, 1975, p. 33, Col. 1.

Nichols, Alan H., 566 Vallejo Street (North Beach), White, male, 45 years old, nominated by Judge Drewes. Previous positions: president, Young Republicans of San Francisco, 1957; president, Young Republicans of California, 1959; vice-president, National Young Republicans, 1960-61; member, San Francisco Library Commission, 1962-65; member 1966-71 and president 1970-71, San Francisco Board of Education and San Francisco City College. Author of article and books on water distribution in California. Currently practices law in San Francisco. His clients include the Eastshore Park Project Corporation of the City and County of San Francisco (which has been asked to prepare a development program for San Francisco port by the board of supervisors), the Building Industry Conference Board of San Francisco, and an unidentified corporation being sued for nonpayment of rent by the San Francisco port.

Poole, Charlotte, 90 Cedro Avenue (Sunset), Black, female, 57 years old, nominated by Judge Brown. Wife of Cecil F. Poole, formerly a U.S. Attorney, now associated with the law firm of Jacobs, Sills, and Coblentz, whose clients include several large construction and development corporations.

Rosenbaum, Alan A., 2283—27th Avenue, (Sunset), White, male, 62 years old, nominated by Judge Cragen. Retired police lieutenant, formerly employed by San Francisco Police Department.

Shapiro, William, 3778 Washington Street (Presidio Heights), White, male, 28 years old, nominated by Judge Karesh. Urban Planner, employed by U.C. Medical Center at San Francisco.

Sims, Richard III, 2579 Sacramento (Pacific Heights), White, male, 31 years old, nominated by Judge Dandurand. Son of a state appellate judge. Previously executive director of the Mayor's Task Force on Crime and counsel to Sheriff Richard Hongisto. Currently practicing law with the firm of Thelen, Marrin, Johnson & Bridges, whose clients include several of the largest construction companies in the United States, including the Bechtel Corporation. In July 1975 signed a letter urging other lawyers to support the candidacy of Joe Freitas for district attorney.

Tentes, Spiron J., 2051 Broadway Street, (Pacific Heights), White, male, 54 years old, nominated by Judge Vavuris. Public accountant.